FILE COPY

FILED
JUL 6 1949
CHARLES ELMORE CROPLEY
CLERK

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1949

No. 174

LAURA DICKINSON,

Appellant,

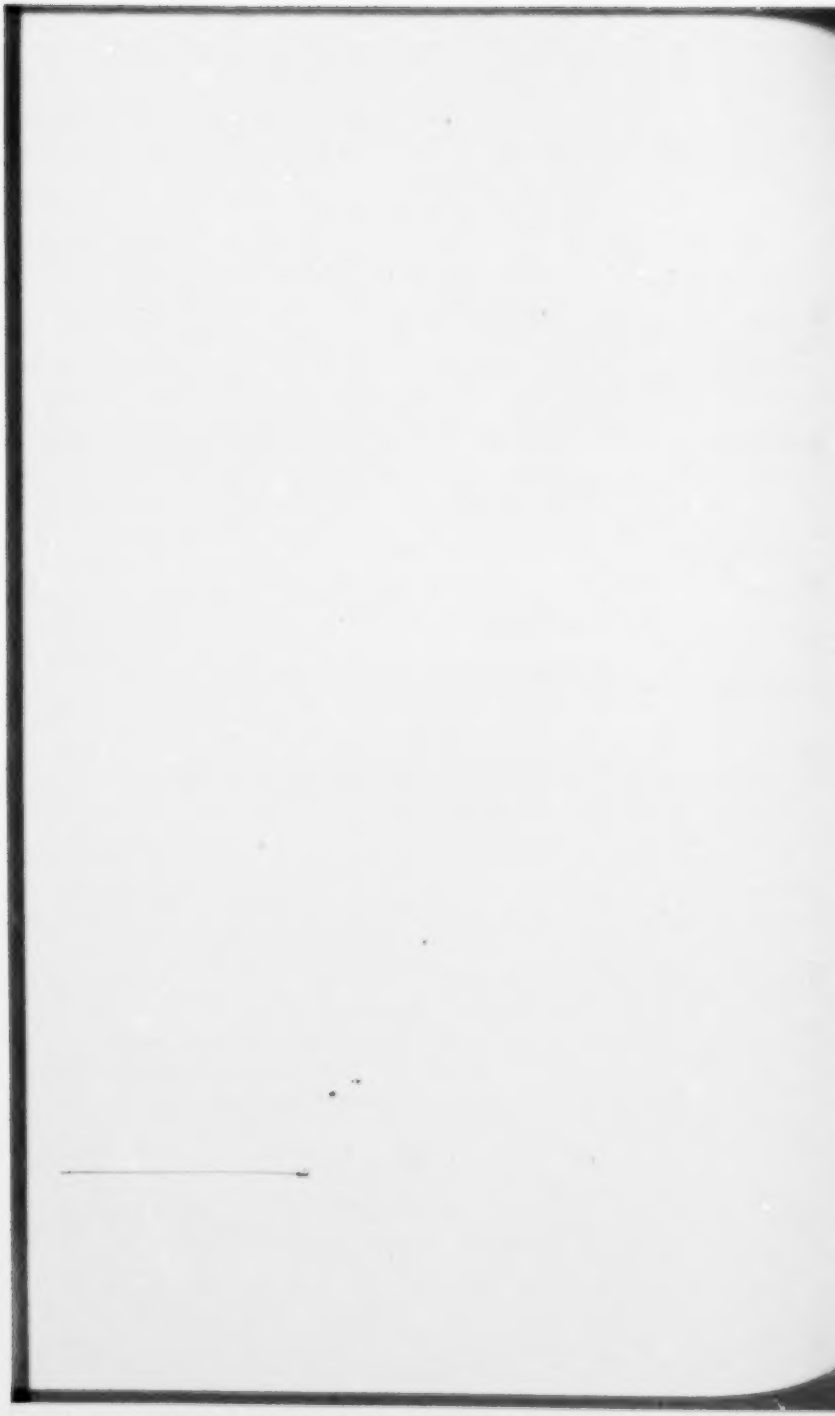
vs.

C. FRED PORTER, STATE COMPTROLLER OF THE STATE OF IOWA, ET AL.

APPEAL FROM THE SUPREME COURT OF THE STATE OF IOWA

STATEMENT OPPOSING JURISDICTION AND MOTION TO DISMISS OR AFFIRM

ROBERT L. LARSON,
Attorney General of Iowa,
DON HISE,
First Assistant Attorney General of Iowa,
EARL F. WISDOM,
Special Assistant Attorney General of Iowa,
BERT F. WISDOM,
F. H. BECKER,
County Attorney of Dubuque County, Iowa,
Counsel for Appellees.



BLEED THROUGH–POOR COPY

INDEX

Subject Index

	Page
Statement opposing jurisdiction	1-3
Motion to dismiss or affirm	75-76

Table of Cases Cited

Aero Transit Co v. *Georgia Pub. Ser. Com.*, 295 U. S. 285, 79 L. Ed. 1439, 55 S. Ct. 709 ..... 9, 19, 22, 59

Ahrweiler v. *Board*, 226 Iowa 229, 283 N. W. 889 ..... 57, 61, 62

A. Magnano Co. v. *Hamilton*, 292 U. S. 40, 78 L. Ed. 1109, 54 S. Ct. 599 ..... 56, 59

American Sugar Ref. Co. v. *State of Louisiana*, 179 U. S. 89, 45 L. Ed. 102, 21 S. Ct. 43 ..... 8, 18, 21, 59

Apartment Operators' Assn. v. *City*, 254 N. W. 443, 191 Minn. 365 ..... 20, 37, 50, 52, 57

Asbury Hospital v. *Cass County*, 326 U. S. 207, 90 L. Ed. 6, 66 S. Ct. 61 ..... 57, 71

Bacon v. *Walker*, 204 U. S. 311, 254 U. S. 315 45

Baker v. *Town of West Hartford*, 89 Conn. 394, 94 Atl. 283 ..... 37, 41

Bell's Gap R. R. Co. v. *Pennsylvania*, 134 U. S. 232, 33 L. Ed. 892, 10 S. Ct. 533 ..... 8, 10, 24, 25

Blume v. *Crawford Co.*, 217 Iowa 545, 250 N. W. 733 ..... 20, 33

Board of Supervisors v. *Stewart*, 30 Iowa 9, 1 Am. Rep. 238 57

Booth v. *State of Indiana*, 237 U. S. 391, 59 L. Ed. 1011, 35 S. Ct. 617 ..... 37, 43

Boston v. *Jackson*, 260 U. S. 309, 67 L. Ed. 274, 43 S. Ct. 129 75

Brown-Forman Co. v. *Kentucky*, 217 U. S. 563, 54 L. Ed. 883, 30 S. Ct. 578 9

Campbell v. *Olney*, 262 U. S. 352, 67 L. Ed. 1021, 43 S. Ct. 559 6

Carman v. *Hickman County*, 215 S. W. 408 34

Carmichael v. *So. Coal & Coke Co.*, 301 U. S. 495, 81 L. Ed. 1245, 57 S. Ct. 868 ..... 9, 16, 19, 25, 37, 48, 56, 59, 69

Page

Carroll v. *City of Cedar Falls*, 221 Iowa 277, 261 N. W. 652 57
Chicago, R. I. & P. Ry. Co. v. *Devine*, 239 U. S. 52, 60 L. Ed. 140, 36 S. Ct. 27 75
Citizens Tel. Co. v. *Fuller*, 229 U. S. 322, 57 L. Ed. 1206, 33 S. Ct. 833 ..... 9, 12
Clark v. *Kansas City*, 176 U. S. 114, 44 L. Ed. 392, 20 S. Ct. 284 ..... 19, 27
Clear Lake Co-op. L.S.S. Assn. v. *Weir*, 200 Iowa 1293, 206 N. W. 297 ..... 20, 34
Connolly v. *Union Sewer Pipe Co.*, 184 U. S. 540 26
Continental Baking Co. v. *Woodring*, 286 U. S. 352, 76 L. Ed. 1155, 52 S. Ct. 595 19
Cook v. *Marshall County*, 196 U. S. 261, 49 L. Ed. 471, 25 S. Ct. 233 ..... 19, 26
Corrigan v. *Buckley*, 271 U. S. 323, 70 L. Ed. 969, 46 S. Ct. 521 ..... 6, 7
Dickinson v. *Porter*, 35 N. W. (2d) 66, 4, 23, 56, 57, 58, 59, 60, 61, 62, 63, 64
Everson v. *Board of Education*, 330 U. S. 1, 91 L. Ed. 711, 67 S. Ct. 504 ..... 57, 72
Fallbrook Irrigation Dist. v. *Bradley*, 164 U. S. 112, 41 L. Ed. 388, 17 S. Ct. 56 ..... 56, 66
Farwell v. *Brick Mfg. Co.*, 97 Iowa 286, 66 N. W. 176 ..... 20, 33
Great Northern Railway Co. v. *Whitfield*, 272 N. W. 787, 65 S. D. 173 ..... 19, 22, 30, 50, 52
Green v. *Frazier*, 253 U. S. 233, 64 L. Ed. 878, 50 S. Ct. 499 ..... 56, 68
Grout v. *Kendall*, 195 Iowa 467, 192 N. W. 529 ..... 57, 63
Hairston v. *Danville & Western Ry. Co.*, 208 U. S. 598, 52 L. Ed. 637, 28 S. Ct. 331 ..... 56, 66
Heisler v. *Thomas Colliery Co.*, 260 U. S. 245, 67 L. Ed. 237, 25 S. Ct. 83 ..... 9, 13
Henderson Bridge Co. v. *City of Henderson*, 173 U. S. 592, 43 L. Ed. 823, 19 S. Ct. 553 ..... 19, 27, 37, 42
Hicklin v. *Coney*, 290 U. S. 169, 78 L. Ed. 247 19
Hill v. *Rae*, 158 Pac. 826, 52 Mont. 378 ..... 20, 28
Hodges v. *Snyder*, 261 U. S. 600, 67 L. Ed. 819, 43 S. Ct. 435 76

BLEED THROUGH—POOR COPY

Page

Home Ins. Co. v. *New York*, 134 U. S. 594, 33 L. Ed. 1025, 10 S. Ct. 593 ..... 8, 11

Jones v. *City of Portland*, 245 U. S. 217, 62 L. Ed. 252 ..... 56, 67

King v. *Mullins*, 171 U. S. 404 at 435, 436, 43 L. Ed. 214 at 226, 18 S. Ct. 925 at 937 ..... 37, 39

Lake Superior Consolidated Iron Mines v. *Lord*, 271 U. S. 577, 70 L. Ed. 1093, 46 S. Ct. 627 ..... 19, 27

Lawrence v. *State Tax Com. of Mississippi*, 286 U. S. 276, 76 L. Ed. 1102, 52 S. Ct. 556 ..... 9, 15, 19, 21

Leicht v. *City of Burlington*, 73 Iowa 29, 34 N. W. 494 ..... 20, 32, 37, 40, 41

Liberty Warehouse Co. v. *Burley Tobacco Growers' Cooperative*, 276 U. S. 71, 72 L. Ed. 473, 48 S. Ct. 291 ..... 19, 27

Loftus v. *Department of Agriculture*, 211 Iowa 566, 232 N. W., 412, 283 U. S. 809, 75 L. Ed. 1427, 51 S. Ct. 647 6

Louisville Gas & Electric Co. v. *Coleman*, 277 U. S. 32, 72 L. Ed. 770, 48 S. Ct. 423 ..... 37, 45, 46, 56, 57

Madden v. *Commonwealth of Kentucky*, 309 U. S. 83, 82 L. Ed. 590, 60 S. Ct. 406 ..... 9, 17, 35, 37, 48

Michigan Central R. Co. v. *Powers*, 201 U. S. 245, 50 L. Ed. 744, 26 S. Ct. 459 8

Milheim v. *Moffat Tunnel Dist.*, 262 U. S. 710, 67 L. Ed. 1194, 43 S. Ct. 694 56

Miller v. *Childers*, 107 Okla. 57, 238 Pac. 204 ..... 50, 51

Metropolitan Cas. Co. v. *Brownell*, 294 U. S. 580, 79 L. Ed. 1070, 55 S. Ct. 538 9

Missouri v. *Dockery*, 191 U. S. 165, 48 L. Ed. 133, 24 S. Ct. 53 ..... 6, 35

Missouri Pacific Ry. Co. v. *Castle*, 224 U. S. 541, 56 L. Ed. 875, 32 S. Ct. 606 ..... 75, 76

Myers v. *Board of Education*, 48 Oh. App. 43, 192 N. E. 393 ..... 50, 54

New York Rapid Transit Corp. v. *New York*, 303 U. S. 573, 82 L. Ed. 1024, 58 S. Ct. 721 ..... 9, 17

Nashville, C. & St. L. Ry. v. *Browning*, 310 U. S. 362, 60 S. Ct. 968, 84 L. Ed. 1254 ..... 19, 25

Northwestern Laundry v. *City of Des Moines*, 239 U. S. 486, 60 L. Ed. 396, 36 S. Ct. 206 ..... 37, 44

Page

Ohio Oil Co. v. *Conway*, 281 U. S. 146, 74 L. Ed. 775, 50 S. Ct. 310 ..... 9, 14
Orient Ins. Co. v. *Daggs*, 172 U. S. 557, 43 L. Ed. 552, 19 S. Ct. 281 ..... 8, 11
Puget Sound Co. v. *King County*, 264 U. S. 22, 68 L. Ed. 541, 44 S. Ct. 261 ..... 9, 14
Rapid Transit Corp. v. *City of New York*, 303 U. S. 578 17
Rindge v. *County of Los Angeles*, 262 U. S. 700, 67 L. Ed. 1186 56
Sage Stores Co. v. *Kansas*, 323 U. S. 32, 89 L. Ed. 25, 65 S. Ct. 9 ..... 57, 71
Southwestern Oil Co. v. *Texas*, 217 U. S. 114, 54 L. Ed. 688, 30 S. Ct. 496 8
State v. *Snyder*, 29 Wyo. 199, 212 Pac. 771 57
Stebbins v. *Riley*, 268 U. S. 137, 69 L. Ed. 884, 45 S. Ct. 425, 44 A.L.R. 1454 9
Strickley v. *Highland Boy Mining Co.*, 200 U. S. 527, 50 L. Ed. 581, 26 S. Ct. 301 ..... 56, 66
Sugarman v. *United States*, 249 U. S. 182, 63 L. Ed. 550, 39 S. Ct. 191 ..... 6, 7
Thomas v. *Gay*, 169 U. S. 264, 42 L. Ed. 740, 18 S. Ct. 340 ..... 19, 56
Tigner v. *Texas*, 310 U. S. 141, 84 L. Ed. 1124, 60 S. Ct. 879 ..... 9, 19, 26
Toyota v. *Ter. of Hawaii*, 226 U. S. 184, 57 L. Ed. 180, 53 S. Ct. 47 ..... 9, 37, 42
Union Lime Co. v. *C. & N. W. Ry. Co.*, 233 U. S. 211, 58 L. Ed. 924, 34 S. Ct. 522 56
United States v. *Johnson*, 327 U. S. 106, 90 L. Ed. 562, 66 S. Ct. 464 6
Viles v. *Iowa State Board of Assessment and Review*, 233 Iowa 604, 273 N. W. 338, 302 U. S. 637, 82 L. Ed. 496, 58 S. Ct. 38 6
Walls v. *Midland Carbon Co.*, 254 U. S. 300, 65 L. Ed. 276, 41 S. Ct. 118 ..... 37, 45
Williams v. *Mayor and City Council of Baltimore*, 289 U. S. 36, 77 L. Ed. 1015, 53 S. Ct. 431 ..... 9, 15, 56, 69
Zucht v. *King*, 260 U. S. 174, 67 L. Ed. 194, 43 S. Ct. 24 ..... 6, 7

BLEED THROUGH—POOR COPY

Statutes Cited

	Page
Code of Iowa, 1946, Chapter 426, pages 1228, 1229, as amended by Chapter 152, Laws of the 52nd General Assembly:	
Section 161.2	39
Section 404.4	32, 40
Section 426.6	4
Section 427.1	35
Section 441.5	39
Constitution of the United States, 14th Amendment,	2, 8, 10, 18, 35, 36, 38, 43, 71
Homestead Tax Credit Act, Chapter 325, Code of Iowa, 1946	61
Laws of the 17th General Assembly of Iowa, 1878, Chapter 169	32
Military Service Tax Credit Fund (Ch. 231, Laws of 52nd G. A.)	64
Rules of the Supreme Court of the United States:	
Rule 7	75
Rule 12, par. 3	75

BLEED THROUGH-POOR COPY

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1949

No. 174

LAURA DICKINSON,

Appellant,

vs.

C. FRED PORTER, STATE COMPTROLLER OF THE STATE OF IOWA, ET AL.

APPEAL FROM THE SUPREME COURT OF THE STATE OF IOWA

STATEMENT IN RESISTANCE TO JURISDICTION

Appellees hereby resist the jurisdiction of this Court and as grounds therefor state:

(1) The Appellant has not stated substantial grounds meriting review by this Court;

(2) It is the duty of this Court to decline jurisdiction whenever it appears that the alleged Federal Constitutional question is not substantial in character;

(3) Questions of violation of State Constitution will not be reviewed by this Court;

(4) The Fourteenth Amendment invoked by Appellant permits classification, and the Courts will not interfere with a legislative classification unless it is arbitrary, capricious, hostile, palpably erroneous, and very wide of any reasonable mark;

(5) The Fourteenth Amendment to the Federal Constitution does not require an ironclad rule of equal taxation by states, and this Court will not interfere unless the classification adopted by the state is arbitrary, capricious, hostile, and palpably erroneous;

(6) In the matter of classification, the states have a wide discretion; and in the field of taxation the states have a broader power of classification than in other fields of legislation;

(7) The Legislative Enactment challenged by Appellant merely classifies agricultural land for different tax treatment from other real estate for school purposes, and such classification is not arbitrary, capricious, hostile and palpably erroneous, and is not prohibited by the First Section of the Fourteenth Amendment to the Federal Constitution;

(8) The classification of agricultural lands into tracts of ten acres or more is not an arbitrary, hostile, nor capricious classification, and is not prohibited by the First Section of the Fourteenth Amendment to the Federal Constitution;

(9) The classification of school districts into those having a millage rate of more or less than 15 mills is not arbitrary, hostile, nor capricious and is not prohibited by the First Section of the Fourteenth Amendment to the Federal Constitution;

(10) The Record in the instant case shows on its face that the legislative enactment here under attack is based upon clear constitutional power of the State Legislature,

BLEED THROUGH—POOR COPY

and does not violate the First Section of the Fourteenth Amendment to the Federal Constitution, as interpreted by this Court; and

(11) This Court should deny the review sought by Appellant.

BRIEF IN SUPPORT OF RESISTANCE TO APPELLANT'S STATEMENT OF JURISDICTION

Introduction

The legislative enactment, the constitutionality of which is challenged herein by Appellant, is found in Chapter 426, pages 1228, 1229, Code of Iowa, 1946, as amended by Chapter 152, Laws of the 52nd General Assembly of Iowa. The pertinent portions of said enactment are set forth correctly in paragraph "B" of Appellant's "Statement As to Jurisdiction" except that there should be added to Section 426.6 (P. 3 of Statement) the following enacted as a part of Chapter 152, Section 13, Laws of 52nd General Assembly of Iowa:

> "The owner may, within thirty days thereafter, appeal to the board of supervisors of the county wherein the land involved is situated by serving notice of said appeal upon the chairman of said board. The board shall hear such appeal promptly and shall determine anew all questions involved in said appeal and shall within ten (10) days after such hearing, mail to the owner at his last known address, notice of its decision. In the event of disallowance the owner may, within ten (10) days from the date such notice is mailed, appeal such disallowance by the board of supervisors to the district court of that county by serving written notice of appeal on the county auditor. The appeal shall be tried de novo and may be heard in term time or vacation. The decision of the district court thereon shall be final."

Appellant's challenge to the constitutionality of this legislative enactment is based upon certain provisions of the Constitution of Iowa. This challenge was denied by the Supreme Court of Iowa in its opinion filed December 14, 1948, and reported in 35 N. W. (2d) 66. It is therefore ele-

BLEED THROUGH—POOR COPY

mentary that this Court will not review the opinion of the State Court on state constitutional questions.

Appellant's challenge to the constitutionality of the legislative enactment under the Constitution of the United States (and the only question pertinent to this appeal) is that the classifications under the enactment are violative of Section One of the Fourteenth Amendment to the Constitution of the United States in that Appellant alleges and argues that said classifications grant to certain citizens and taxpayers rights and privileges not equally granted to all citizens and taxpayers.

The classifications complained of are:

(1) Classification of agricultural lands used for agricultural or horticultural purposes in a class separate and apart from other real estate for "credits" upon taxes for general school purposes;

(2) The further classification of agricultural lands upon the basis of tracts of ten acres or more in order to be entitled to the credits; and

(3) The limitation of said agricultural lands to school districts wherein the levy for general school (operational) purposes exceeds fifteen mills, and the application of the moneys (credits) appropriated from the state treasury to those school districts wherein the said levy exceeds fifteen mills.

It is to be noted that the appropriation is made, and the funds paid, to the school district wherein the "credits" are effected and the actual operation amounts to legislative determination that a "ceiling" of fifteen mills is placed upon "agricultural lands" as defined in the legislative enactment, and the appropriation from the state treasury merely re-imburses the school district for the revenue lost by reason of such ceiling.

I

Proposition

It is the duty of this Court to decline jurisdiction unless the Federal constitutional question is substantial in character.

AUTHORITIES

Sugarman v. *United States of America*, 249 U. S. 182 at 185, 63 L. Ed. 550 at 551, 39 S. Ct. 191 at 192;

Zucht v. *King*, 260 U. S. 174 at 176, 177, 67 L. Ed. 194 at 198, 43 S. Ct. 24 at 25;

Campbell v. *Olney*, 262 U. S. 352, 67 L. Ed. 1021, 43 S. Ct. 559;

Corrigan et al v. *Buckley*, 271 U. S. 323 at 329, 70 L. Ed. 969 at 972, 46 S. Ct. 521 at 523;

Loftus v. *Department of Agriculture*, 211 Iowa 566, 232 N. W. 412;

(Dismissed on appeal for want of a substantial Federal question), 283 U. S. 809, 75 L. Ed. 1427, 51 S. Ct. 647;

Vilas v. *Iowa State Board of Assessment and Review*, 223 Iowa 604, 273 N. W. 338;

(Dismissed on appeal for want of a substantial Federal question), 302 U. S. 637, 82 L. Ed. 496, 58 S. Ct. 38;

United States v. *Johnson*, 327 U. S. 106 at 113, 90 L. Ed. 562 at 566, 66 S. Ct. 464 at 467;

Missouri v. *Dockery*, 191 U. S. 165 at 170, 171, 48 L. Ed. 133 at 134, 24 S. Ct. 53 at 54.

Application of Cases Cited

The rule is elementary that a substantial Federal constitutional question must be raised to justify review by this Court.

BLEED THROUGH—POOR COPY

In *Sugarman* v. *United States, supra,* (249 U. S. at 184) this Court stated the rule as follows:

> "But mere reference to a provision of the Federal Constitution, or the mere assertion of a claim under it, does not authorize this court to review a criminal proceeding; and it is our duty to decline jurisdiction unless the writ of error presents a constitutional question substantial in character and properly raised below."

This rule was applied by this Court in *Zucht* v. *King, supra,* wherein this Court (260 U. S. at 176) said:

> "But, although the validity of a law was formally drawn in question, it is our duty to decline jurisdiction whenever it appears that the constitutional question presented is not, and was not at the time of granting the writ, substantial in character. Sugarman *v.* United States, 249 U. S. 182, 184."

See also *Corrigan* v. *Buckley, supra,* wherein this Court (271 U. S. at 329) stated the rule as follows:

> "The mere assertion that the case is one involving the construction or application of the Constitution, and in which the construction of federal laws is drawn in question, does not, however, authorize this Court to entertain the appeal; and it is our duty to decline jurisdiction if the record does not present such a constitutional or statutory question substantial in character and properly raised below. Sugarman *v.* United States, 249 U. S. 182, 184; Zucht *v.* King, 260 U. S. 174, 176."

The Appellant states no substantial Federal question in her "Statement as to Jurisdiction." In Paragraph "G," page 10 thereof she merely asserts that the legislative enactment constitutes arbitrary classification, appropriates state funds for a private purpose, and is unconstitutional in the amount, manner, and method by which the exemption or tax credit and the allocation of the funds to the school

district is determined under the statute; that the legislative enactment appropriates five million dollars annually to pay the tax credits provided therein; that the money so appropriated is raised by general statewide taxation; and that every taxpayer in Iowa, as well as Appellant herein has a vital interest in the matter.

This is a "mere assertion that the case is one involving the * * * application of the Constitution" and "does not authorize this Court to entertain the appeal" in this case, nor justify this Court in so doing. *Sugarman* v. *U. S.*, 249 U. S. at 184; *Zucht* v. *King*, 260 U. S. at 176.

II

Proposition

The Fourteenth Amendment permits classification, and does not prescribe any ironclad rule of equality in taxation, and the Courts will not interfere unless the legislative classification is arbitrary, capricious, hostile, palpably erroneous, and very wide of any reasonable mark

AUTHORITIES

Bell's Gap R. R. Co. v. *Pennsylvania*, 134 U. S. 232 at 237, 33 L. Ed 892 at 895, 10 S. Ct. 533;

Home Ins. Co. v. *New York*, 134 U. S. 594 at 606, 33 L. Ed. 1025 at 1032, 10 S. Ct 593 at 597;

Orient Ins. Co. v. *Daggs*, 172 U. S. 557 at 562, 43 L. Ed. 552 at 554, 19 S. Ct. 281 at 282;

American Sugar Ref. Co. v. *State of Louisiana*, 179 U. S. 89 at 92, 94, 95, 45 L. Ed. 102 at 104, 105, 21 S. Ct. 43 at 45, 46;

Michigan Central R. Co. v. *Powers*, 201 U. S. 245 at 293 and 302, 50 L. Ed. 744 at 761 and 765, 26 S. Ct. 459 at 462 and 466;

Southwestern Oil Co. v. *Texas*, 217 U. S. 114 at 123, 54 L. Ed. 688 at 692, 693, 30 S. Ct. 496 at 499;

BLEED THROUGH—POOR COPY

Brown-Forman Co. v. *Kentucky*, 217 U. S. 563 at 572, 54 L. Ed. 883 at 886, 887, 30 S. Ct. 578 at 579, 580;
Toyota v. *Ter. of Hawaii*, 226 U. S. 184 at 191, 192, 57 L. Ed. 180 at 184; 53 S. Ct. 47 at 48;
Citizens Tel. Co. v. *Fuller*, 229 U. S. 322 at 329, 332, 57 L. Ed. 1206 at 1213, 1214, 33 S. Ct. 833 at 835, 836;
Heisler v. *Thomas Colliery Co.*, 260 U. S. 245 at 255, 67 L. Ed. 237 at 241, 25 S. Ct. 83 at 84, 85;
Puget Sound Co. v. *King County*, 264 U. S. 22 at 27, 28, 68 L. Ed. 541 at 546, 44 S. Ct. 261 at 263;
Stebbins v. *Riley*, 268 U. S. 137 at 142, 143, 69 L. Ed. 884 at 888, 889, 45 S. Ct. 424 at 426, 44 A. L. R. 1454 at 1459, 1460;
Ohio Oil Co. v. *Conway*, 281 U. S. 146 at 159, 160, 74 L. Ed. 775 at 782, 50 S. Ct. 310 at 314;
Lawrence v. *State Tax Com. of Mississippi*, 286 U. S. 276 at 284, 76 L. Ed. 1102 at 1108, 52 S. Ct. 556 at 559;
Williams v. *Mayor and City Council of Baltimore*, 289 U. S. 36 at 42 and 46, 77 L. Ed. 1015 at 1022 and 1024, 53 S. Ct. 431 at 433 and 434, 435;
Metropolitan Casualty Co. of New York v. *Brownell*, 294 U. S. 580 at 584, 79 L. Ed. 1070 at 1073, 55 S. Ct. 538 at 539, 540;
Aero Transit Co. v. *Georgia Pub. Service Com.*, 295 U. S. 285 at 290, 293, 79 L. Ed. 1439 at 1444, 1445, 55 S. Ct. 709 at 711, 712;
Carmichael v. *So. Coal & Coke Co.*, 301 U. S. 495 at 509, 510, 81 L. Ed. 1245 at 1253, 57 S. Ct. 868 at 872;
New York Rapid Transit Corp. v. *New York*, 303 U. S. 573 at 578, 579, 82 L. Ed. 1024 at 1030, 58 S. Ct. 721 at 724, 725;
Madden v. *Commonwealth of Kentucky*, 309 U. S. 83 at 87, 90, 82 L. Ed. 590 at 593, 60 S. Ct. 406 at 408;
Tigner v. *Texas*, 310 U. S. 141 at 145, 146, 84 L. Ed. 1124 at 1127, 60 S. Ct. 879 at 881.

Application of Cases Cited

The "parent" cases, among more recent authorities on the proposition that the Fourteenth Amendment permits classification, do not prescribe any ironclad rule of taxation, and that a classification determined upon by a legislature will not be disturbed by the Courts unless it is clearly arbitrary, capricious, hostile, and palpably erroneous are *Bell's Gap R. R. Co.* v. *Pennsylvania, supra,* and *Home Ins. Co.* v. *New York, supra.*

In *Bell's Gap R. R. Co.* v. *Pennsylvania,* this Court, 134 U. S. at 237, stated the rule as follows:

> "The provision in the Fourteenth Amendment, that no State shall deny to any person within its jurisdiction the equal protection of the laws, was not intended to prevent a State from adjusting its system of taxation in all proper and reasonable ways. It may, if it chooses, exempt certain classes of property from any taxation at all, such as churches, libraries and the property of charitable institutions. It may impose different specific taxes upon different trades and professions, and may vary the rates of excise upon various products; *it may tax real estate and personal property in a different manner;* it may tax visible property only, and not tax securities for payment of money; it may allow deductions for indebtedness, or not allow them. All such regulations, and those of like character, so long as they proceed within reasonable limits and general usage, are within the discretion of the state legislature, or the people of the State in framing their Constitution. But clear and hostile discriminations against particular persons and classes, especially such as are of an unusual character, unknown to the practice of our governments, might be obnoxious to the constitutional prohibition. It would, however, be impracticable and unwise to attempt to lay down any general rule or definition on the subject, that would include all cases. They must be decided as they arise. *We*

BLEED THROUGH—POOR COPY

think that we are safe in saying, that the Fourteenth Amendment was not intended to compel the State to adopt an iron rule of equal taxation. If that were its proper construction, it would not only supersede all those constitutional provisions and laws of some of the States, whose object is to secure equality of taxation, and which are usually accompanied with qualifications deemed material; but it would render nugatory those discriminations which the best interests of society require; which are necessary for the encouragement of needed and useful industries, and the discouragement of intemperance and vice; and which every State, in one form or another, deems it expedient to adopt." (Italics supplied)

And in *Home Ins. Co.* v. *New York,* 134 U. S. at 606, this Court said:

> "But the amendment does not prevent the classification of property for taxation—subjecting one kind of property to one rate of taxation, and another kind of property to different rate—distinguishing between franchises, licenses and privileges, and visible and tangible property, and between real and personal property. Nor does the amendment prohibit special legislation. Indeed, the greater part of all legislation is special, either in the extent to which it operates, or the objects sought to be obtained by it."

In *Orient Ins. Co.* v. *Daggs,* 172 U. S. at 562, this Court, with reference to classification under the Fourteenth Amendment said:

> "It is not necessary to state the reasoning upon which classification by legislation is based or justified. This court has had many occasions to do so, and only lately reviewed the subject in *Magoun* v. *Illinois Trust and Savings Bank,* 170 U. S. 283. We said in that case that 'the State may distinguish, select and classify objects of legislation, and necessarily the power must have a wide range of discretion.' And this because of

the function of legislation and the purposes to which it is addressed. Classification for such purposes is not invalid because not depending on scientific or marked differences in things or persons or in their relations. *It suffices if it is practical, and is not reviewable unless palpably arbitrary.*" (Italics supplied)

In *Citizens Tel. Co.* v. *Fuller*, 229 U. S. at 329, 331, this Court said:

"The power of exemption would seem to imply the power of discrimination, and in taxation, as in other matters of legislation, classification is within the competency of the legislature. We said in *American Sugar Refining Co.* v. *Louisiana*, 179 U. S. 89, 92, that from time out of mind it has been the policy of this Government to classify for the purpose of taxation, and a discrimination was supported between taxation of producers and manufacturers of products; and yet in *Billings v. Illinois*, 188 U. S. 97, 102, we compared the rule with that in *Connolly v. Union Sewer Pipe Co.*, 184 U. S. 540, where a distinction between buyers of products and the producers of them was held an illegal discrimination.

It may, therefore, be said that in taxation there is a broader power of classification than in some other exercises of legislation. • • •

To these cases may be added others. They illustrate the power of the legislature of the State over the subjects of taxation and the range of discrimination which may be exercised in classifying those subjects when not obviously exercised in a spirit of prejudice and favoritism. *Cook v. Marshall County*, 196 U. S. 261, 274; *Missouri v. Dockery*, 191 U. S. 165. The cases decided subsequent to the decision in *Bell's Gap Railroad Co. v. Pennsylvania*, have applied its principle to many varying instances. Granting the power of classification, we must grant Government the right to select the differences upon which the classification shall be based, and they need not be great or conspicuous. *Keeney v. New York*, 222 U. S. 525, 536. The State is

BLEED THROUGH—POOR COPY

not bound by any rigid equality. This is the rule;—its limitation is that it must not be exercised in 'clear and hostile discriminations between particular persons and classes.' See 223 U. S. 59, 62, 63. Thus defined and thus limited, it is a vital principle, giving to the Government freedom to meet its exigencies, not binding its action by rigid formulas but apportioning its burdens and permitting it to make those 'discriminations which the best interests of society require.' "

In *Heisler* v. *Thomas Colliery Co.*, 260 U. S. at 255, this Court stated the rule as follows:

> "In its exercise in taxation, we have said, it is competent for a State to exempt certain kinds of property and tax others, the restraints upon it only being against 'clear and hostile discriminations against particular persons and classes.' Discriminations merely are not inhibited, for, it was recognized, that there are 'discriminations which the best interests of society require.' *Bell's Gap R. R. Co. v. Pennsylvania,* 134 U. S. 232, 237.
>
> The principle of that case, and its concession to the power of a State, has received expression and illustration in cases which concerned the exercise of the power in the classification of objects for taxing purposes. In *Watson v. State Comptroller,* 254 U. S. 122, 124, it is said, 'Any classification is permissible which has a reasonable relation to some permitted end of governmental action. . . . It is enough, for instance, if the classification is reasonably founded in 'the purposes and policy of taxation.' In other cases it is said that facts which can be reasonably conceived of as having existed when the law was enacted will be assumed to justify it. *Lindsley v. Natural Carbonic Gas Co.*, 220 U. S. 61, 78; *Crescent Cotton Oil Co. v. Mississippi,* 257 U. S. 129, 137. And 'it makes no difference that the facts may be disputed or their effect opposed by argument and opinion of serious strength. It is not within the competency of the courts to arbitrate in such contrariety.' "

To this point, and to the question of violation of the provisions of the state constitution, this Court in *Puget Sound Co.* v. *King County,* 264 U. S. at 27, 28, said:

> "We are considering this case only from the standpoint of the Fourteenth Amendment to the Federal Constitution. The objections based on the state constitution of Washington have been settled adversely and conclusively for us by the decision herein of the State Supreme Court. Counsel cite us cases which have little relation to the federal question before us. *Johnson v. Wells Fargo & Co.,* 239 U. S. 234; *Ewert* v. *Taylor,* 38 S. D. 124; *State ex rel. Owen v. Donald,* 161 Wisc. 188, and like cases involved the application of somewhat stringent provisions of state constitutions as to equality of taxation on all kinds of property which left but little room for classification. Such restrictions have much embarrassed state legislatures because actual equality of taxation is unattainable. The theoretical operation of a tax is often very different from its practical incidence, due to the weakness of human nature and anxiety to escape tax burdens. This justifies the legislature, where the Constitution does not forbid, in adopting variant provisions as to the rate, the assessment and the collection for different kinds of property. The reports of this Court are full of cases which demonstrate that the Fourteenth Amendment was not intended, and is not to be construed, as having any such object as these stiff and unyielding requirements of equality in state constitutions. No better statement of the unvarying attitude of this Court on this subject can be found than in the often quoted language of Mr. Justice Bradley in speaking for the Court in Bell's Gap R. R. Co. *v.* Pennsylvania, 134 U. S. 232, 237."

See also *Ohio Oil Co.* v. *Conway,* 281 U. S. at 159 wherein this Court said:

> "The States have a wide discretion in the imposition of taxes. When dealing with their proper domestic

BLEED THROUGH—POOR COPY

concerns, and not trenching upon the prerogatives of the national government or violating the guarantees of the Federal Constitution, the States have the attribute of sovereign powers in devising their fiscal systems to insure revenue and foster their local interests. The States, in the exercise of their taxing power, as with respect to the exertion of other powers, are subject to the requirements of the due process and the equal protection clauses of the Fourteenth Amendment, but that Amendment imposes no iron rule of equality, prohibiting the flexibility and variety that are appropriate to schemes of taxation. *The State may tax real and personal property in a different manner. It may grant exemptions.* The State is not limited to ad valorem taxation. It may impose different specific taxes upon different trades and professions and may vary the rates of excise upon various products. In levying such taxes, the State is not required to resort to close distinctions or to maintain a precise, scientific uniformity with reference to composition, use or value. To hold otherwise would be to subject the essential taxing power of the State to an intolerable supervision, hostile to the basic principles of our Government and wholly beyond the protection which the general clause of the Fourteenth Amendment was intended to assure." (Italics supplied.)

In *Lawrence* v. *State Tax Com.*, 286 U. S. at 284, it is said that tax burdens "which are based upon discriminations not shown to be arbitrary or capricious, do not fall within constitutional prohibitions."

Williams v. *Mayor and City Council of Baltimore*, 289 U. S. 36, sustained an exemption from taxation of a single railroad. This Court (289 U. S. at 46) said:

> "Time with its tides brings new conditions which must be cared for by new laws. Sometimes the new conditions affect the members of a class. If so, the correcting statute must apply to all alike. Sometimes the new conditions affect one only or a few. If so the

correcting statute may be as narrow as the mischief. The Constitution does not prohibit special laws inflexibly and always. It permits them when there are special evils with which existing general laws are incompetent to cope. The special public purpose will then sustain the special form. *Baltimore* v. *United Railways Co., supra.* The problem in last analysis is one of legislative policy, with a wide margin of discretion conceded to the lawmakers. Only in cases of plain abuse will there be revision by the courts."

In *Carmichael* v. *Southern Coal & Coke Co.*, 301 U. S. at 508, 510, this Court stated the rule as follows:

"Taxes, which are but the means of distributing the burden of the cost of government, are commonly levied on property or its use * * *. It is inherent in the exercise of the power to tax that a state be free to select the subjects of taxation and to grant exemptions. Neither due process nor equal protection imposes upon a state any rigid rule of equality of taxation. See *Bell's Gap R. Co. v. Pennsylvania*, 134 U. S. 232, 237; *Lawrence v. State Tax Comm'n*, 286 U. S. 276, 284, This Court has repeatedly held that inequalities which result from a singling out of one particular class for taxation or exemption, infringe no constitutional limitation. *Magoun v. Illinois Trust & Savings Bank*, 170 U. S. 283, 293; *Americrcan Sugar Refining Co. v. Louisiana*, 179 U. S. 89, 94; *Armour Packing Co. v. Lacy*, 200 U. S. 226, 235; *Brown-Forman Co. v. Kentucky*, 217 U. S. 563, 573; *Quong Wing v. Kirkendall*, 223 U. S. 59, 62, 63; *Armour & Co. v. Virginia*, 246 U. S. 1, 6; *Alaska Fish Co. v. Smith*, 255 U. S. 44, 48; *State Board of Tax Comm'rs v. Jackson*, 283 U. S. 527, 537; *Broad River Power Co. v. Query*, 288 U. S. 178, 180; *Fox v. Standard Oil Co.*, 294 U. S. 87, 97; *Cincinnati Soap Co. v. United States, ante*, p. 308; *Great Atlantic & Pacific Tea Co. v. Grosjean, ante*, p. 142.

Like considerations govern exemptions from the operation of a tax imposed on the members of a class. A legislature is not bound to tax every member of a class

BLEED THROUGH—POOR COPY

or none. It may make distinctions of degree having a rational basis, and when subjected to judicial scrutiny they must be presumed to rest on that basis if there is any conceivable state of facts which would support it. *Rast v. Van Deman & Lewis Co.*, 240 U. S. 342, 357; *Heisler v. Thomas Colliery Co.*, 260 U. S. 245, 255; *Swiss Oil Corp. v. Shanks*, 273 U. S. 407, 413; *Lawrence v. State Tax Comm'n, supra;* cf. *Metropolitan Casualty Insurance Co. v. Brownell*, 294 U. S. 580, 584.

This restriction upon the judicial function, in passing on the constitutionality of statutes, is not artificial or irrational. A state legislature, in the enactment of laws, has the widest possible lattitude within the limits of the Constitution. In the nature of the case it cannot record a complete catalogue of the considerations which move its members to enact laws. In the absence of such a record courts cannot assume that its action is capricious, or that, with its informed acquaintance with local conditions to which the legislation is to be applied, it was not aware of facts which afford reasonable basis for its action. Only by faithful adherence to this guiding principle of judicial review of legislation is it possible to preserve to the legislative branch its rightful independence and its ability to function."

See also *Rapid Transit Corp.* v. *City of New York*, 303 U. S. at 578; and *Madden* v. *Kentucky*, 309 U. S. 83, wherein this Court at pp. 87, 88, said:

> "The broad discretion as to classification possessed by a legislature in the field of taxation has long been recognized. This Court fifty years ago concluded that 'the Fourteenth Amendment was not intended to compel the State to adopt an iron rule of equal taxation,' and the passage of time has only served to underscore the wisdom of that recognition of the large area of discretion which is needed by a legislature in formulating sound tax policies. Traditionally classification has been a device for fitting tax programs to local needs and usages in order to achieve an equitable distribution of the tax burden. It has, because of this, been pointed

out that in taxation, even more than in other fields, legislatures possess the greatest freedom in classification. Since the members of a legislature necessarily enjoy a familiarity with local conditions which this Court cannot have, the presumption of constitutionality can be overcome only by the most explicit demonstration that a classification is a hostile and oppressive discrimination against particular persons and classes. The burden is on the one attacking the legislative arrangement to negative every conceivable basis which might support it."

From the foregoing cases, and hundreds more which might be cited, it is apparent that the Fourteenth Amendment permits classification for tax purposes; that it does not prohibit a state from adjusting its tax burdens upon any basis deemed fair and equitable by the legislature thereof; that the Amendment does not prescribe any iron-clad rule of tax equality, but permits discriminations; and that the Courts will not interfere with a legislative classification unless it is clearly arbitrary, capricious, hostile, and palpably erroneous.

III

Proposition

A legislative classification of agricultural or horticultural lands or producers in a class and according them partial tax exemption or tax credits is a reasonable exercise of legislative discretion and within the legislative power, and is not clearly arbitrary, capricious, hostile or palpably erroneous; and is therefore not in violation of Section 1 of the Fourteenth Amendment to the Constitution of the United States.

Authorities

American Sugar Refining Co. v. *Louisiana*, 179 U. S. 89 at 92, 94, 95, 45 L. Ed. 102 at 104, 105, 21 S. Ct. 43 at 45, 46;

BLEED THROUGH—POOR COPY

Lawrence v. *State Tax Commission of Miss.*, 286 U. S. 286 at 280, 281, 76 L. Ed. 1102 at 1106, 52 S. Ct. 556 at 557;

Continental Baking Co. v. *Woodring*, 286 U. S. 352 at 372, 76 L. Ed. 1155 at 1167, 52 S. Ct. 595 at 602;

Hicklin v. *Coney*, 290 U. S. 169 at 176, 78 L. Ed. 247 at 252, 54 S. Ct. 142 at 145;

Aero Transit Co. v. *Georgia Pub. Serv. Com.*, 295 U. S. 285 at 291, 79 L. Ed. 1439 at 1444, 1445, 55 S. Ct. 709 at 711, 712;

Carmichael v. *So. Coal & Coke Co.*, 301 U. S. 495 at 512, 81 L. Ed. 1245 at 1255, 57 S. Ct. 868 at 873, 874;

Tigner v. *Texas*, 310 U. S. 141 at 145, 147, 84 L. Ed. 1124 at 1127, 1128, 60 S. Ct. 879 at 881;

Nashville, C. & St. L. Ry. v. *Browning*, 310 U. S. 362 at 368, 369, 60 S. Ct. 968 at 972, 84 L. Ed. 1254 at 1257, 1258;

Lake Superior Consolidated Iron Mines v. *Lord*, 271 U. S. 577 at 582, 70 L. Ed. 1093 at 1101, 46 S. Ct. 627 at 629;

Cook v. *Marshall County*, 196 U. S. 261 at 274, 49 L. Ed. 471 at 476, 25 S. Ct. 233 at 237;

Liberty Warehouse Co. v. *Burley Tobacco Grower's Cooperative*, 276 U. S. 71 at 89, 90 and 96, 72 L. Ed. 473 at 480 and 483, 48 S. Ct. 291 at 294 and 297;

Clark v. *Kansas City*, 176 U. S. 114 at 117, 119, and 120, 44 L. Ed. 392 at 397, 20 S. Ct. 284 at 286;

Thomas v. *Gay*, 169 U. S. 264 at 278 and 280, 281, 42 L. Ed. 740 at 746, 747, 18 S. Ct. 340 at 345, 346;

Henderson Bridge Co. v. *City of Henderson*, 173 U. S. 592 at 603, 615, and 620, 621, 43 L. Ed. 823 at 827 and 832, 833, 19 S. Ct. 553 at 557, and 562, 564;

Great Northern Ry. Co. v. *Whitfield*, 272 N. W. 787 at 792, 794, 65 S. D. 173;

Hill v. *Rae*, 158 Pac. 826 at 828, 829, 52 Montana 378;
Apartment Operators' Ass'n v. *City*, 254 N. W. 443 at 444, 445, 191 Minn. 365;
Leicht v. *City of Burlington*, 73 Iowa 29 at 30, 32, 34, N. W. 494;
Farwell v. *Brick Mfg. Co.*, 97 Iowa 286 at 294, 66 N. W. 176;
Clear Lake Co-op L. S. S. Ass'n v. *Weir*, 200 Iowa 1293 at 1298, 206 N. W. 297 at 299;
Blume v. *Crawford Co.*, 217 Iowa 545 at 550, 551, 250 N. W. 733 at 735.

Application of Cases Cited

The Supreme Court of Iowa held, in the instant case, that the legislative enactment was enacted in aid of agriculture, and that the classification of "agricultural lands" as "all tracts of land of ten acres or more, and not laid off into lots of less than ten acres or divided by streets and alleys into parcels of less than ten acres lying within any school corporation in this state and *in good faith used for agricultural or horticultural purposes.* Any land laid off or platted into lots of less than ten acres belonging to and a part of other lands of more than ten acres and *in good faith used for agricultural or horticultural purposes shall be entitled to the benefits of this chapter*" (Italics supplied.) See Par. B, Appellant's Statement as to Jurisdiction (Section 426.2, Code of Iowa), at page 2) was not in violation of Section 1, Fourteenth Amendment to the Constitution of the United States.

This question has been determined by this Court so many times that it no longer presents a substantial Federal question.

The opinion of the Supreme Court of Iowa (Filed December 14, 1948, and reported in 35 N. W. (2d) 66 and appended

BLEED THROUGH—POOR COPY

to Appellant's Statement as to Jurisdiction as Appendix "C") that this classification for the purposes of taxation, partial tax exemption, or tax "credits" was amply supported by opinions of this Court, the Supreme Court of Iowa, and the Courts of highest jurisdiction of many states of the United States.

Time will not permit treatment of all such cases. Reference to all cases hereinbefore cited is respectfully requested.

In *American Sugar Ref. Co.* v. *Louisiana*, 179 U. S. 89 at 95, this Court sustained a classification of sugar refiners for the purpose of taxation into those who refined the products of their own plantations, and those who engaged in a general refining business, and at the cited page said:

> "*The discrimination is obviously intended as an encouragement to agriculture*, and does not deny to persons and corporations engaged in a general refining business the equal protection of the laws." (Italics supplied)

This last cited case has been cited and followed many times by this Court and by the Courts of highest jurisdiction in the States of the United States.

It is true that the tax there involved was a license tax, but this is immaterial. This Court, in *Lawrence* v. *State Tax Com.*, 286 U. S. 276 at 280, said:

> "The present tax has been defined by the Supreme Court of Mississippi as an excise and not a property tax, *Hattiesburg Grocery Co. v. Robertson*, 126 Miss. 34; 88 So. 4; *Knox v. Gulf, M. & N. R. Co.*, 138 Miss. 70; 104 So. 689, but in passing on its constitutionality we are concerned only with its practical operation, not its definition or the precise form of descriptive words which may be applied to it. See *Educational Films Corp. v. Ward*, 282 U. S. 379, 387; *Pacific Co. v. Johnson*, 285 U. S. 480; *Shaffer v. Carter, supra*, pp. 54-55."

This Court sustained as reasonable and not arbitrary the exemption of farmers as a class from a license fee required

of other carriers. In *Acro Mayflower Transit Co.* v. *Georgia Pub. Service Com.*, 295 U. S. 285 at 290, 291, this Court said:

> "The court took notice of a common opinion, 'well justified by the facts,' that the farm lands of the state had been 'accustomed to bear an undue proportion of the taxes.' The effect of the exception would be to equalize the burden. 'Every one knows that as a general rule a tax of this kind finally reaches the consumer of the product, or user of the service; and hence an exemption of carriers of such products is to be taken as an exemption of the products themselves, and not of the carrier.' The enumeration of rational bases of distinction was not put forward as exhaustive. The court expressed the belief that others could be added.
>
> We think a classification thus designed to ameliorate the lot of the producers of farm and dairy products is not an arbitrary preference within the meaning and the condemnation of the Fourteenth Amendment. The plight of the Georgia farmer has been pictured by the state court in words already quoted. To free him of fresh burdens might seem to a wise statecraft to be a means whereby to foster agriculture and promote the common good."

The *Supreme Court of South Dakota in Great Northern Ry. Co.* v. *Whitfield*, 65 S. D. 173, 254 N. W. 787 likewise took judicial notice of the fact that lands used exclusively for agricultural purposes receive less benefits from school taxes than other lands. In the cited case, the Court, 272 N. W. at 792, 793, said:

> "We believe it true also that the Legislature could reasonably conclude that the benefit to agricultural land from school taxes is less than the benefit to other lands from the same source. See Clark v. Kansas City, 176 U. S. 114, 20 S. Ct. 284, 44 L. Ed. 392, which held valid a statute which excepted from its operation lands used exclusively for agricultural purposes if owned by indi-

BLEED THROUGH—POOR COPY

viduals, but not if owned by corporations. It is conceivable that the benefits from education so far as real estate is concerned, whether it be the enhanced value of that real estate due to adequate educational facilities offered or some other benefit, reflects itself less in real estate used exclusively for agricultural purposes than any other land. For example, a merchant's business or even a railroad's business, which is dependent somewhat upon real estate in the operation of the business, might be quite differently affected by an adequate educational system located in the community, than the business of agriculture. So far as concerns real estate, which is set apart primarily for homes or residences by being platted, obviously educational advantages reflect themselves in that real estate differently from the manner in which they reflect themselves in land used exclusively for agriculture."

The Supreme Court of Iowa in the instant case, 35 N. W. 2d 66 at 73 said:

"It is true of course there are common characteristics between agricultural land and other realty in the matter of taxation for school purposes. But we cannot say there are not characteristics which differentiate it from other realty in relation to school taxes. We are not convinced the legislature could not with reason conclude that agricultural land derives less benefit, in enhanced value or otherwise, from the money raised by school taxes than other real estate. City or town residence property or real estate used for business purposes may well be affected by our school system in quite a different way than land used for agricultural purposes which consists of comparatively large tracts. The legislature could reasonably have concluded that agricultural lands are taxed excessively for school purposes as compared with property devoted to other uses and that such taxes should be equalized in accordance with benefits received. * * *

Leicht v. City of Burlington, 1887, 73 Iowa 29, 31, 34 N. W. 494, 495, upheld as uniform in the constitutional

sense chapter 47, Acts 16th General Assembly (as amended section 616, Code, 1897, section 404.4, Code, 1946), which completely exempted from taxation for any municipal purpose, except road tax, lands within the extended limits of a city or town containing more than ten acres, occupied and used for agricultural purposes. The opinion states 'the design of the legislature evidently was to exempt property which is used essentially for agricultural purposes.'

The language just quoted is repeated in Farwell v. Des Moines Brick Mfg. Co., 97 Iowa 286, 294, 295, 66 N. W. 176, 35 L. R. A. 63, apparently as stating the effect of the decision in Leicht v. Burlington, supra. 1 Cooley, 4th Ed., Section 284, page 599, says that in Iowa an exemption from city taxation of agricultural or unplatted land in a city has been upheld, citing the Leicht case."

See Appellant's Statement as to Jurisdiction, Appendix "C", p. 8, 9.

Furthermore, this fact was substantiated by proof. Exhibit "B" (certified to this Court) shows that the ratio of taxable farm property per child to taxable non-farm property per child in Iowa in 1941 in the 99 counties in Iowa was from 1.85 to 1 in Dubuque County to 8.97 in Mills County. Exhibit "C" shows the ratio in 97 consolidated schools of Iowa was from .97 to 1 in the Cotter District to 62.80 to 1 in the Sommers District. Exhibit "D" shows that the ratio of taxable farm property to non-farm property in 99 city or town independent districts was from 1.17 to 1 in Ridgeway District to 68.37 to 1 in Jewell District.

In other words the farm or agricultural property paid from 1.17 to 68.37 times as much school taxes per child as did the non-farm property. To say that the legislature could not under the Fourteenth Amendment equalize this school tax burden "would render nugatory those discriminations which the best interests of society require; which are necessary for the encouragement of needed and useful in-

BLEED THROUGH—POOR COPY

dustries." *Bell's Gap. R. R. Co.* v. *Pennsylvania,* 134 U. S. at 237.

This Court, in *Carmichael* v. *Southern Coal & Coke Co.,* 301 U. S. at 512, said:

> "Reasons for the selections, if desired, readily suggest themselves. Where the public interest is served one business may be left untaxed and another taxed, in order to promote the one, *American Sugar Refining Co. v. Louisiana, supra; Heisler v. Thomas Colliery Co., supra; Aero Transit Co. v. Georgia Public Service Comm'n, supra;* or to restrict or suppress the other, *Magnano Co. v. Hamilton,* 292 U. S. 40; *Fox v. Standard Oil Co., supra; Quong Wing v. Kirkendall, supra; Singer Sewing Machine Co. v. Brickell,* 233 U. S. 304; *Alaska Fish Co. v. Smith, supra,* 48; *Great Atlantic & Pacific Tea Co. v. Grosjean, supra.* The legislature may withhold the burden of the tax in order to foster what it conceives to be a beneficent enterprise. *This Court has often sustained exemption for the encouragement of agriculture, American Sugar Refining Co. v. Louisiana, supra,* 95; *Aero Transit Co. v. Georgia Public Service Comm'n, supra,* 291. Similarly, the legislature is free to aid a depressed industry such as shipping. The exemption of business operating for less than twenty weeks in the year may rest upon similar reasons, or upon the desire to encourage seasonal or unstable industries." (Italics supplied.)

That property may be classified for tax purposes, taxing one class and exempting another, without violating the equal protection of the Fourteenth Amendment, is settled beyond peradventure of doubt by this Court in *Nashville C. & St. L. Ry.* v. *Browning,* 310 U. S. 362, wherein at p. 368 it is said:

> "This Court had previously had occasion to advert to the narrow and sometimes cramping provision of these state uniformity clauses, and has left no doubt that their inflexible restrictions upon the taxing powers of the state were not to be insinuated into that meritorious

conception of equality which alone the Equal Protection Clause was designed to assure. See *Puget Sound Co. v. King County*, 264 U. S. 22, 27.

That the states may classify property for taxation; may set up different modes of assessment, valuation and collection; may tax some kinds of property at higher rates than others; and in making all these differentiations may treat railroads and other utilities with that separateness which their distinctive characteristics and functions in society make appropriate—these are among the common-places of taxation and of constitutional law." • • • Since, so far as the Federal Constitution is concerned, a state can put railroad property into one pigeonhole and other property into another, the only question relevant for us is whether the state has done so. *If the discrimination of which the Railway complains had been formally written into the statutes of Tennessee, challenge to its constitutionality would be frivolous.* If the state supreme court had construed the requirement of uniformity in the Tennessee Constitution so as to permit recognition of these diversities, no appeal could successfully be made to the Fourteenth Amendment." (Italics supplied.)

Referring to *Connolly* v. *Union Sewer Pipe Co.*, 184 U. S. 540, this Court, in *Cook* v. *Marshall County*, 196 U. S. at 274 said:

"It can scarcely be doubted that, if the *Connolly* case had dealt with the subject of taxation, a discriminative tax upon producers of agricultural products, either greater or less than that imposed upon other manufacturers or producers, might have been held valid without denying to either party the equal protection of the laws."

Also referring to *Connolly's* case, this Court in *Tigner* v. *Texas*, 310 U. S. at 145, 146, said:

"Since *Connolly's* case was decided, nearly forty years ago, an impressive legislative movement bears

BLEED THROUGH—POOR COPY

witness to general acceptance of the view that the differences between agriculture and industry call for differentiation in the formulation of public policy. The states as well as the United States have sanctioned cooperative action by farmers; have restricted their amenability to the anti-trust laws; have relieved their organizations from taxation."

See also *Lake Superior Con. Iron Mines* v. *Lord*, 271 U. S. 577, wherein a classification of "ore" lands was sustained. *Liberty Warehouse Co.* v. *Burley Tobacco Grower's Co-operative Marketing Ass'n.*, 276 U. S. at 96 "recognized as permissible some discrimination intended to encourage agriculture" citing *American Sugar Refining Co.* v. *Louisiana*, 179 U. S. 89, 95.

In *Clark* v. *Kansas City*, 176 U. S. 114, this Court sustained a tax statute which excepted "from its operation lands used for agricultural purposes if owned by individuals." The Court, p. 120, said:

> "In the case at bar the distinction is between tracts of agricultural lands in a certain relation to cities and lands used for other purposes in such relation.
>
> We think the distinction is justified by the principle of the cases we have cited. That principle leaves to the State the adaptation of its laws to its conditions."

In *Henderson Bridge Co.* v. *City of Henderson*, 173 U. S. 592, this Court sustained an attack upon the city charter which exempted tracts of land of ten acres devoted to farming purposes. At p. 620, 621, this Court said:

> "The assignments of error embrace the contention that the judgment below denies to the Bridge Company the equal protection of the laws, 'in that its property has been subjected to taxation from which all other land not divided into lots has been exempted, although the only reason for exemption apply with much greater force to the property of the plaintiff in error than to the property which enjoys the exemption.'

This contention is based upon the proviso in the city's charter declaring that 'no land embraced within the city limits, and outside of ten-acre lots as originally laid off, shall be assessed and taxed by the city council, unless the same is divided or laid out into lots of five acres or less, and unless all of same is actually used and devoted to farming purposes.' Kentucky Acts 1887-88, Vol. 2, p. 991.

We are of opinion that this proviso has no reference to bridges, their approaches, piers, etc., but refers only to lands capable of being cultivated or used and divided into lots upon which buildings may be erected or over which streets or other highways may be constructed. This is the better interpretation of both the old and the new charter of the city. Besides, the construction placed by the state court upon the charter of the city in respect of its power to tax the bridge property necessarily leads to the conclusion that the provision forbidding the taxation of lands not divided into lots of five acres or less does not apply to a bridge erected over the Ohio River within the city's limits. In this view there is no basis for the suggestion of a denial of the equal protection of the laws," * * *.

The Courts of highest jurisdiction in numerous states of the United States have followed the foregoing cited cases decided by this Court.

In *Hill* v. *Rae*, 52 Montana 578, 158 Pac. 826 at 828, 829, the Supreme Court of Montana said:

"That classification is permissible, because in the essential nature of things and in any due appreciation of equality in the operation of the law it is necessary in legislation for purposes of revenue, or in the application of the police power strictly so-called, or *in legislation designed to increase the industries of the state, develop its resources, or add to its wealth and prosperity, is abundantly settled by judicial decision as well as by the course of legislation.* To cover the entire field of this subject is impossible within any reasonable

BLEED THROUGH—POOR COPY

limits. Suffice it to say that by the Supreme Court of the United States, construing this very amendment, classifications have been sustained based upon differences in the amount of legacies, differences between corporations, *differences between land dependent on its us for agricultural and other purposes,* differences between fire insurance and other insurance, differences in the character of work, differences between hiring persons to labor in the state and hiring persons to labor out of the state, differences between sugar refineries based entirely on whether the sugar refined was purchased or produced by the refiner, as well as various other differences too numerous to mention. Magoun v. Illinois T. & S. Bank, 170 U. S. 283, 18 Sup. Ct. 594, 42 L. Ed. 1037; Clark v. Kansas City, 176 U. S. 114, 20 Sup. Ct. 284, 44 L. Ed. 392; Gundling v. Chicago, 177 U S. 183, 20 Sup. Ct. 633, 44 L. Ed. 725; Petit v. Minnesota, 177 U. S. 164, 20 Sup. Ct. 666, 44 L. Ed. 716; Williams v. Fears, 179 U. S. 270, 21 Sup. Ct. 128, 45 L. Ed. 186, American Sugar Refining Co. v. Louisiana, 179 U. S. 89, 21 Sup. Ct. 43, 45 L. Ed. 102; and cases cited in these decisions. * * *"

"In Clark v. Kansas City, supra, a state statute was under consideration which authorized certain cities to annex lands adjoining the city limits, but provided that 'nothing in this act shall be taken or held for agricultural purposes when the same is not owned by any railroad or other corporation,' and the court upheld the distinction, declaring that it was justified by the principle of the cases cited above:

> 'That principle leaves to the state the adaptation of its laws to its conditions. The growth of cities is inevitable, and in providing for their expansion it may be the judgment of an agricultural state that they should find a limit in the lands actually used for agriculture.'

"In American Sugar Refining Co. v. Louisiana, supra, a state statute imposing a license tax upon persons and corporations carrying on the business of refining

sugar and molasses, but exempting from its operation 'planters and farmers grinding and refining their own sugar and molasses,' was sustained with the remark that:

> 'The discrimination is obviously intended as an encouragement to agriculture, and does not deny to persons and corporations engaged in a general refining business the equal protection of the laws.'

"So, too, legislative activity having for its avowed purpose the encouragement of this or that particular industry deemed of importance to the state has been prolific of results." (Italics supplied)

The Supreme Court of South Dakota, in *Great Northern Ry. Co.* v. *Whitfield*, 65 S. D. 173, 254 N. W. 787 likewise took judicial notice of the fact that lands used exclusively for agricultural purposes receive less benefits from school taxes than other land, sustained a classification of agricultural lands for tax purposes, and cited numerous cases from this Court construing the Fourteenth Amendment to the Federal constitution.

In the cited case, the Court, 272 N. W. at 792, 793, said:

> "*We believe it true also that the Legislature could reasonably conclude that the benefit to agricultural land from school taxes is less than the benefit to other lands from the same source.* See Clark v. Kansas City, 176 U. S. 114, 20 S. Ct. 284, 44 L. Ed. 392, which held valid a statute which excepted from its operation lands used exclusively for agricultural purposes if owned by individuals, but not of owned by corporations. *It is conceivable that the benefits from education so far as real estate is concerned, whether it be the enhanced value of that real estate due to adquate educational facilities offered or some other benefit, reflects itself less in real estate used exclusively for agricultural purposes than any other land.* For example, a merchant's business or even a railroad's business, which is dependent some-

BLEED THROUGH—POOR COPY

what upon real estate in the operation of the business, might be quite differently affected by an adequate educational system located in the community, than the business of agriculture. *So far as concerns real estate, which is set apart primarily for homes or residenced by being platted, obviously educational advantages reflect themselves in that real estate differently from the manner in which they reflect themselves in land used exclusively for agriculture.* Land used exclusively for agriculture consists of a comparatively large tract which is the whole base of the business. This is not true of land used in other businesses. It seems to us that repeatedly courts have sustained classifications founded upon reasons much more obscure than those here presented.

We believe it reasonable for a Legislature, in an agricultural state, to offer inducements to agriculture through its tax laws. Southwestern Oil Co. v. Texas, 217 U. S. 114, 30 S. Ct. 496, 54 L. Ed. 688; American Sugar Refining Company v. Louisiana, 179 U. S. 89, 21 S. Ct. 43, 45 L. Ed. 102; Bell's Gap Railroad Co. v. Pennsylvania, supra.

In all probability other considerations occurred to the Legislature in making the distinction, but the possible considerations herein pointed out are sufficient in our opinion to prevent us from holding that there could be no possible rational basis for the legislative classification. This opinion is further confirmed by a reading of the case of Heisler v. Thomas Colliery Co., 260 U. S. 245, 43 S. Ct. 83, 67 L. Ed. 237, wherein it was held that the differences between bituminous coal and anthracite forms a just basis for their different classification under the tax laws, and the case of State Tax Board of Com'rs v. Jackson, 283 U. S. 527, 51 S. Ct. 540, 75 L. Ed. 1248, 73 A. L. R. 1464, wherein it was held that the differences between chain store operation and the conduct of a single store was a sufficient basis for legislative classification for taxation." (Italics supplied)

The State of Iowa has, for more than 70 years, had a statute which exempted lands used for agricultural pur-

poses (in tracts of ten acres or more) from municipal taxes, except for library purposes and at not to exceed one and one-fourth (1¼) mills for road purposes. Section 404.4, Code of Iowa, 1946, provides as follows:

> "404.4 Agricultural lands. No land included within the limits of any city or town which shall not have been laid off into lots of ten acres or less, or which shall not subsequently be divided into parcels of ten acres or less by the extension of streets and alleys, and which shall also in good faith be occupied and used for agricultural or horticultural purposes, shall be taxable for any city or town purpose, except that said lands and all personal property necessary to the use and cultivation of said agricultural or horticultural lands shall be liable to taxation for city and town road purposes, at not exceeding one and one-fourth mills; and for library purposes."

This statute was first enacted as Chapter 47, Laws of the 16th General Assembly of Iowa in 1876. It then provided for its application to tracts of land of twenty acres or more used for agricultural purposes. This statute was amended by Chapter 169, Laws of the 17th General Assembly of Iowa in 1878 to reduce the size of the tracts to ten acres.

This statute was attached in *Leicht* v. *City of Burlington*, 73 Iowa 29, 34 N. W. 494 upon the grounds that the classification was purely arbitrary, discriminatory, and capricious, and denied the plaintiff of the equal protection of the laws.

The Supreme Court of Iowa, in 73 Iowa at 31, 34 N. W. at 495, said:

> "It is urged by the plaintiffs, to be sure, that the distinction which the legislature has attempted to make between lots containing more than 10 acres, and those containing 10 acres or less, is purely arbitrary, and that for this reason the act cannot be said to have a uniform

BLEED THROUGH—POOR COPY

operation, as it might if the larger lots as provided could be said to constitute a class, as distinguished from the smaller lots. *As to this we think it may be said that the design of the legislature evidently was to exempt property which is used essentially for agricultural purposes. Where the limits of a city are extended so as to take in what is used essentially as a farm, there is much reason for exempting it from city taxes.* But where the property is substantially residence property, as distinguished from agricultural, and valuable only as such whether improved or not, there is less reason, when it becomes city property, that it should be exempt from city taxes." (Italics supplied)

In *Farwell* v. *Brick Mfg. Co.*, 97 Iowa 286 at 294, 295; 66 N. W. 176 at 179, in commenting on *Leicht* v. *City of Burlington, supra,* said:

> "In Leicht *v.* City of Burlington, 73 Iowa, 29 (34 N. W. Rep. 494), in which was involved the constitutionality of the act of the Sixteenth General Assembly, it was said that 'the design of the legislature evidently was to exempt property which is used essentially for agricultural purposes.'"

In *Blume* v. *Crawford County,* 217 Iowa 545 at 550, 551; 250 N. W. 733 at 735, 736, the Supreme Court of Iowa sustained a declaration of public policy of the legislature of Iowa to aid agriculture against attack on the grounds of unconstitutionality. At the cited page, 217 Iowa at 550, 551, 250 N. W. 735, 736, the Court said:

> "So in the case at bar the legislature in chapter 138 of the Code has declared the public policy of this state, with reference to extending aid to agriculture, the great basic industry of this state. There is no inhibition against this power in any of the provisions of the Constitution, and it is not repugnant to any constitutional provision. The legislature, under the powers vested in it by the state, has extended aid to farm

associations for the purpose of aiding agriculture, horticulture, animal industry, and similar kindred occupations. The unconstitutionality of this act is raised at a time when the national government, and all state governments, are bending every effort to aid agriculture in their present distressed condition. The defendant farm bureau was not organized for private purposes. On the contrary, it is an enterprise engaged in furthering the welfare and benefit of agriculture, the great basic industry of this state, and for the benefit of the public generally. The act in question is a valid exercise of the state's governmental functions, and does not delegate the taxing power of the state to a nonofficial body. The lower court held this legislation constitutional, and we find no error therein."

To the same effect, see *Carman* v. *Hickman County*, 215 S. W. (Ky.) 408.

The Supreme Court of Iowa has held that classifications based upon agriculture are natural, and obvious, and not arbitrary, unreasonable and discriminatory. In *Clear Lake Co-Op L. & S. Ass'n* v. *Weir*, 200 Iowa 1293 at 1298, 1299; 206 N. W. 297 at 299, the Supreme Court of Iowa said:

> "Agriculture, of which stock-raising is a part, is a basic industry in this state, as well as in a large part of the nation, north and south. A much larger proportion of the people of this state are engaged in agriculture than in any other industry or business. *There is no industry to be found anywhere in which classifications based thereon are more natural, obvious, and exclusive than in agriculture. It is as distinct in its character as mining, manufacturing, banking, or any other branch or division into which society is economically divided.*" (Italics supplied)

Numerous classifications of agricultural products for tax purposes appear in the laws of Iowa, some dating back as far as 1851. Examples are exemption from taxation of agricultural produce harvested by or for the person as-

BLEED THROUGH—POOR COPY

sessed within one year of assessment, all wool shorn from his sheep within said time, swine under nine months of age, all other domestic animals under one year of age, and all farming utensils of any person who makes a living by farming. Other classifications in said laws exempt family equipment, tools of mechanics, books of lawyers, all up to $300 in value, and the team, wagon and harness of teamsters, and capital stock of electric utilities, and manufacturing, and mercantile corporations. See Section 427.1, Code of Iowa, 1946.

Classifications for exemptions or different tax treatment are therefore within the "purposes and policy of taxation" in Iowa. "Traditionally classification has been a device for fitting tax programs to local needs and usages in order to achieve an equitable distribution of the tax burden." *Madden* v. *Kentucky*, 309 U. S. 83 at 87, 88.

These authorities clearly support such tax exemptions. The statute here under consideration may properly be held as Appellees contend as placing a ceiling upon the tax levied upon agricultural land, as defined in the law, and an appropriation to the school district to reimburse it for the revenue lost. The State of Iowa through its legislature long ago placed a ceiling upon such land within cities and towns and made no such appropriation. In no event is Appellant's tax on her land raised. It would be if the ceiling were placed on the agricultural land, as defined by the legislative enactment, and the funds not appropriated to reimburse the school district for the revenue lost.

In so far as the Fourteenth Amendment is concerned, the language of this Court in *Missouri* v. *Dockery*, 191 U. S. 165, 48 L. Ed. 133, 24 S. Ct. 53 is applicable. In the last cited case, in 191 U. S. at 170, 171, this Court said:

> "However this may be, the petitioner admitted at the argument that his own tax was correct, and that he would have had no case under the Fourteenth Amend-

ment if the companies had been exempted altogether. Magoun *v.* Illinois Trust & Savings Bank, 170 U. S. 283, 293-295; Connolly *v.* Union Sewer Pipe Co., 184 U. S. 540, 562. But his rights under that amendment turn on the power of the State, no matter by what organ it acts. Virginia *v.* Rives, 100 U. S. 313, 318. Therefore, if the Supreme Court of the State construed the statutes as exempting express companies from this tax and substituting another, as it is argued on behalf of the defendants in error that the statutes do, the petitioner cannot complain here. For the legislature could exempt them, and the question whether it has done so or not is for the state courts to decide in their construction of its acts. Furthermore, if the State could grant a total exemption it could grant a partial exemption, and if it has done so, de facto, through its officers, the petitioner cannot come here on an allegation that the officers acted as they did without the authority of the State. That again is for the state court to decide. The petitioner has no case under the Constitution of the United States, and nothing else is open."

Certainly, the Appellant in the case at bar has not raised any substantial Federal question under Section One of the Fourteenth Amendment to the Constitution of the United States, and this Court should decline jurisdiction to review the opinion and decision of the Supreme Court of Iowa.

IV

Proposition

The classification of agricultural lands at ten acres in size in order that the tax credit may apply is not arbitrary, hostile, capricious, or unreasonable, and does not violate Section 1, of the Fourteenth Amendment to the Constitution of the United States.

BLEED THROUGH—POOR COPY

King v. *Mullins*, 171 U. S. 404 at 435, 436, 43 L. Ed. 214 at 226, 18 S. Ct. 925 at 937;
Leicht v. *City of Burlington*, 73 Iowa 29, 34 N. W. 494;
Henderson Bridge Co. v. *City of Henderson*, 173 U. S. 592 at 620, 621, 43 L. Ed. 823 at 833, 19 S. Ct. 553 at 564;
Toyota v. *Hawaii*, 226 U. S. 184 at 191, 192. 57 L. Ed. 180 at 184, 53 S. Ct. 47 at 48;
Booth v. *State of Indiana*, 237 U. S. 391 at 397, 398, 59 L. Ed. 1011 at 1017, 35 S. Ct. 617 at 619, 620;
Northwestern Laundry v. *City of Des Moines*, 239 U. S. 486 at 495, 60 L. Ed. 396 at 402, 36 S. Ct. 206 at 210;
Walls v. *Midland Carbon Co.*, 254 U. S. 300 at 314, 315, 65 L. Ed. 276 at 282, 283, 41 S. Ct. 118 at 121;
Louisville Gas & Electric Co. v. *Coleman*, 277 U. S. 32 at 41, 72 L. Ed. 770 at 775, 48 S. Ct. 423 at 426;
Carmichael v. *Southern Coal & Coke Co.*, 301 U. S. 495 at 510, 511, 81 L. Ed. 1245 at 1254, 57 S. Ct. 868 at 873;
Madden v. *Kentucky*, 309 U. S. 83 at 88, 84 L. Ed. 590 at 593, 60 S. Ct. 406 at 408;
Apartment Operator's Ass'n. v. *City of Minneapolis*, 191 Minn. 365 at 370, 254 N.W. 443 at 445;
Baker v. *Town of West Hartford*, 89 Conn. 394, 94 Atl. 283 at 285.

Application of Cited Cases

Appellant complains that the classification of "agricultural lands" at 10 acres or more for the purposes of the legislative enactment constitutes an arbitrary and unreasonable classification and grants to certain citizens and taxpayers rights and privileges not equally granted to all citizens and taxpayers. (See Appellant's Assignment of Errors, p. 2.)

Specifically, Appellant's complaint is that, since she owns 4.13 acres of land devoted exclusively to agricultural purposes, and does not fall within the benefited class, whereas land in tracts of 10 acres or more devoted to the same uses fall within the benefited class, the classification at 10 acres or more renders the legislative enactment in violation of Section One, Fourteenth Amendment to the Federal Constitution as an arbitrary and unreasonable discrimination against her.

That size may be taken into consideration or become the basis of classification is settled beyond doubt by the adjudicated cases, both in this Court, and in Courts of highest jurisdiction of the states of the United States.

Illustrations in state statutes are too numerous to mention more than a few.

In Iowa, it has been the policy of the state to base tax laws as well as others upon size or number. Many statutes apply only to cities of a certain population, and the classification is not objectionable if any city reaching that population comes within the terms of the Act.

Homesteads in Iowa are classified at one-half (½) acre within corporate limits and forty (40) acres without such limits with a limitation of $2500 in value for tax "credits" purposes. In Minnesota, homesteads are classified for partial tax exemption purposes at eighty (80) acres in unplatted lands within corporate limits or without corporate limits, and in cities or towns of less than 5000 population at one-half (½) acre, and in cities of more than 5000 population at one-third (⅓) acre with an assessment of twenty (20%) percent of actual value provided that if the valuation of the homestead is in excess of $4000, the excess is assessed at 33⅓ per cent of actual value.

In Nebraska a homestead is limited to $2000 in value, and may consist of up to 160 acres outside corporate limits and not over 2 lots within corporate limits. In Kansas, the

BLEED THROUGH—POOR COPY

homestead may consist of 160 acres of farm land, or 1 acre within corporate limits.

In Iowa, forest reservations of not less than 2 acres, of continuous area, and fruit tree reservations of not less than 1 acre nor more than 10 acres are assessed at $4 per acre. The fruit tree reservation is assessed at this amount for a period of 8 years after planting. See Section 161.2, Code of Iowa, 1946 and Section 441.5, same Code. These statutes date back to 1906. Other states in forest areas have similar laws.

For this Court to enter the field of determining the "size" or "acreage" of tracts of land would constitute an invasion of the power of the legislature to classify property for taxation. This the Court will not do.

In *King* v. *Mullins, supra,* this Court sustained a classification of lands at 1000 acres against the attack that the classification was arbitrary, capricious and unreasonable. This Court in the cited case, 171 U. S. at 435, 436 said:

> "Another point made by the plaintiff in error is, that the provision of the constitution of Virginia exempting tracts of less than one thousand acres from forfeiture is a discrimination against the owners of tracts containing one thousand acres or more, which amounts to a denial to citizens or landowners of the latter class of the equal protection of the laws. We do not concur in this view. The evil intended to be remedied by the constitution and laws of West Virginia was the persistent failure of those who owned or claimed to own large tracts of lands, patented in the last century, or early in the present century, to put them on the land books, so that the extent and boundaries of such tracts could be easily ascertained by the officers charged with the duty of assessing and collecting taxes. Where the tract was a small one, the probability was that it was actually occupied by some one, and its extent or boundary could be readily ascertained for purposes of assessment and taxation. We can well under-

stand why one policy could be properly adopted as to large tracts which the necessities of the public revenue did not require to be prescribed as to small tracts. The judiciary should be very reluctant to interfere with the taxing systems of a State, and should never do so unless that which the State attempts to do is in palpable violation of the constitutional rights of the owners of property. Under this view of our duty, we are unwilling to hold that the provision referred to is repugnant to the clause of the Fourteenth Amendment forbidding a denial of the equal protection of the laws."

This specific classification was sustained by the Supreme Court of Iowa in 73 Iowa 29, 34 N. W. 494. The legislative enactment challenged in the case at bar, in so far as the classification in tracts of 10 acres or more, was modeled after Section 404.4, Code of Iowa, 1946 hereinbefore quoted. This latter statute and classification was attacked on the grounds that this specific classification is purely arbitrary. The Supreme Court of Iowa, 73 Iowa at 30, 31; 34 N. W. at 494, 495, said:

"It is said that, in exempting lots of over 10 acres in size, and not exempting those of less size, of like character and situation, the act in question does not have a uniform operation, and that certain citizens are allowed privileges and immunities which do not belong to all. *But this act was not made to apply to specific property, nor to specific persons. It was made to apply to a certain class of property, and to the owners of such property, whoever they might be.* It is true that privileges and immunities cannot be granted to a class of citizens. But those who happen to be owners of a certain class of property do not themselves become a class in any proper sense. They do not sustain a relation to each other, but a mere property relation. They are affected by the statute in consequence merely of the circumstances in which they happen to be. It was said in Iowa Railroad Land Co. v. Soper, 39 Iowa, 112: 'If the law operates upon every person within the relations and

BLEED THROUGH—POOR COPY

circumstances provided for, it is sufficient.' The principle involved appears to us to be not unlike what has been frequently decided. McAunich v. Miss. & M. R'y Co., 20 Iowa 338; U. S. Express Co. v. Ellyson, 28 Id., 370; State v. Shroeder, 51 Id. 197.

It is urged by the plaintiffs, to be sure, *that the distinction which the legislature has attempted to make between lots containing more than 10 acres, and those containing 10 acres or less, is purely arbitrary*, and that for this reason the act cannot be said to have a uniform operation, as it might if the larger lots as provided could be said to constitute a class, as distinguished from the smaller lots." (Italics supplied.)

The Court answered this contention in the following language at 73 Iowa at 31, 32 N. W. at 495 where the Supreme Court of Iowa said:

> *"The legislature seems to have thought that large lots bought within the city, and used for agricultural purposes do constitute a class, as distinguished from small lots, though agricultural products be grown upon them to some extent; and we think that it cannot be denied that the thought is correct. Proceeding manifestly upon this thought, it fixed the limit between what might be considered as belonging to one class and what to the other. This was necessary as a practical guide to the assessor. It is of no use to consider the imperfection of the division. Absolute justice in taxation is unattainable."* (Italics supplied)

The statutes of Connecticut exempt from taxation for a period of 20 years forest reservations of one acre or more planted to trees specified in the statute. This statute was attacked upon the grounds that it "provides a special privilege" to the owner of the tract. The Supreme Court of Connecticut sustained the classification. See *Baker* v. *Town of West Hartford*, 89 Conn. 394; 94 Atl. 283.

The case of *Leicht* v. *Burlington, supra,* has been cited repeatedly by the Courts of highest jurisdiction of the several states.

In *Henderson Bridge Co.* v. *City of Henderson,* 173 U. S. 592 this Court sustained an attack upon the city charter *which exempted tracts of land of ten acres* devoted to farming purposes.

This case is quoted at length on pp. 27, 28 of this Brief and will not be repeated here.

This Court also sustained a licensing statute enacted by the Territorial Legislature of Hawaii which classified the District of Honolulu and other districts of the Islands, for the purpose of a differentiation in the license fee required. The plaintiff appellant claimed discrimination in this respect. This Court in *Toyota* v. *Hawaii,* 226 U. S. at 191, 192 held that the classification was reasonable and within the legislative discretion.

This Court, 226 U. S. at 191, 192, said:

> "The remaining contention, urged in various forms by the assignments of error, comes to the single point that the statute created an arbitrary classification. It cannot be said, however, that there was no reasonable basis for a distinction between Honolulu and other districts. And it was the province of the legislature to decide upon the amount of the fees which should be charged. It must be assumed that in so deciding it took into account varying conditions in the respective localities, as, for example, in the amount of business transacted and in the corresponding value of such licenses. Necessarily, as was said in Magoun v. Illinois Trust and Savings Bank, 170 U. S. 283, 294, the power of classification 'must have a wide range of discretion.' It is not reviewable 'unless palpably arbitrary.' Orient Insurance Co. v. Daggs, 172 U. S. 557, 562; Louisville & Nashville R. R. Co. v. Melton, 218 U. S. 36, 52-55; Engel v. O'Malley, 219 U. S. 128; Lindsley v. Natural Carbonic Gas Co., 220 U. S. 61, 78; Mutual Loan Co. v. Martell,

BLEED THROUGH—POOR COPY

222 U. S. 225, 235. With its intimate knowledge of local conditions, the Supreme Court of the Territory said upon this point: 'The great bulk of the business of the Territory is done in Honolulu. It is not for us to say whether we would make the difference in the amount of license fees in this case as large as the legislature has made it. It is sufficient that we cannot say that the difference is unreasonable or that the statute is unequal or arbitrary in its operation.' ''

In *Booth* v. *State of Indiana, supra,* this Court sustained, against a challenge that the classification was arbitrary and in violation of Section 1, of the 14th Amendment to the Federal Constitution, a law of Indiana which required operators of coal mines to provide a wash house upon request of 20 miners, and if the mine did not employ 20 miners, then upon request of one-third (⅓) of the miners employed.

The Court, in the cited case 237 U. S. at 397, 398, pointed out the reasoning by which the Courts sustain "fixed boundaries" in the field of classifications. At the cited pages this Court said:

> "It is, however, further objected that the law discriminates because it may be applied to one mine and not to another, all other conditions being the same but the desire of the miners—indeed, discriminates upon a distinction more arbitrary that that, upon the desire of twenty in one mine as against a lesser number, nineteen, it may be, in another. The objection is a familiar one and has an instance and answer in McLean v. Arkansas, 211 U. S. 539. It is the usual ground of attack upon a distinction based on degree, and seems to have a special force when the distinction depends upon a difference in numbers.
>
> But there are many practical analogies. The jurisdiction of a court is often made to depend upon amounts apparently arbitrarily fixed. For instance, the jurisdiction of the District Court of the United States (formerly the Circuit Court) is limited to civil suits in law

and equity in certain instances in which the amount in controversy is $3,000. It could be objected, as it is here objected, that the amount is arbitrary and that there cannot be any difference in principle between suits for $3,000 and suits for $2,999, a distinction dependent upon one dollar. Indeed, in more acute illustration, the distinction may be made of one cent only. And so might there be objection to any amount which might be selected, as it might be also to any number of petitioning miners which the legislature of Indiana might have selected. Indeed, would not an objection have the same legal strength if the law had been made to depend upon anything else than unanimity of desire? To require that it might well have been thought by the legislature would render the legislation nugatory, and that a lesser number would call it into exercise and attain its object. The conception, no doubt, was that a lesser number—indeed, the number selected—would be fairly representative of the desire and necessity of the miners and that use would breed a habit, example induce imitation and a healthful practice starting with a limited number might become that of all. And such consummation justified the effort, the manner adopted attaining the end sought as well as if not better than a direct and peremptory requirement of the miners and mine owners."

In *Northwestern Laundry* v. *Des Moines*, 239 U. S. 486 sustained a law which applied to laundries in cities of the State of Iowa. "Now or hereafter having a population of sixty-five thousand (65,000) inhabitants or over." This statute was attacked upon the grounds that the classification was arbitrary and an illegal classification in violation of Section 1, Fourteenth Amendment to the Federal Constitution. This Court sustained the classification and in 239 U. S. at 495 said:

"As to the attack upon the ordinance because of arbitrary classification, this question has been so often discussed that nothing further need be said. The ordi-

BLEED THROUGH—POOR COPY

nance applies equally to all coming within its terms, and the fact that other businesses might have been included, does not make such arbitrary classification as annuls the legislation. Nor does it make classification illegal because certain cities are included and others omitted in the statute. *Eckerson* v. *Des Moines*, 137 Iowa, 452."

In *Walls* v. *Midland Carbon Co.*, 254 U. S. 300, 65 L. Ed. 276, 41 S. Ct. 118, this Court sustained a law of the State of Wyoming which designated the location of gas wells as "within ten miles of any incorporated town or industrial plant" for the operation of a classification statute. After citing *Bacon* v. *Walker*, 204 U. S. 311, and with reference to *Bacon* v. *Walker, supra*, in 254 U. S. at 315, this Court said:

> "Pertinent cases were cited, and the exclusion from grazing within two miles of the possessory claim of another was decided to be legal, that 'the selection of some limit is a legislative power,' and that it was 'only against the abuse of the power, if at all, that the courts may interpose.' The mere distance expressed nothing."

To this same point of legislative power to fix a limit or line of demarcation between the taxed and the untaxed, Mr. Justice Holmes in a dissenting opinion in *Louisville Gas & Electric Co.* v. *Coleman*, 277 U. S. at 41, said:

> "When a legal distinction is determined, as no one doubts that it may be, between night and day, childhood and maturity, or any other extremes, a point has to be fixed or a line has to be drawn, or gradually picked out by successive decisions, to mark where the change takes place. Looked at by itself without regard to the necessity behind it the line or point seems arbitrary. It might as well or nearly as well be a little more to one side or the other. But when it is seen that a line or point there must be, and that there is no mathematical or logical way of fixing it precisely, the decision of the

legislature must be accepted unless we can say that it is very wide of any reasonable mark."

The dissenting opinion of Mr. Justice Brandeis in *Louisville Gas & Electric Co., supra,* becomes important for the reason that it is cited and followed by this Court in *Madden v. Kentucky,* 309 U. S. 83 at p. 88. Mr. Justice Brandeis, in his dissenting opinion in *Louisville Gas & Electric Co., supra,* 277 U. S. at 44, 47, said:

> "In Magoun *v.* Illinois Trust & Savings Bank, 170 U. S. 283, 300, 301, the inheritance tax, in the case of strangers to the blood, exempted estates of $500, but did not allow that exemption to larger estates. Moreover, it prescribed progressive rates, rising in steps with the amount of the gift and applying to the entire gift and not merely to the excess. Under the law a legatee of $10,000, being subject to a 3 per cent tax, would receive net $9,700, whereas a legatee of $10,001, being subject to a 4 per cent tax on the entire legacy would receive net only $9,600.96. The Court held the classification reasonable, saying:
>
> 'The condition is not arbitrary because it is determined by that value (of the inheritance); it is not unequal in operation because it does not levy the same percentage on every dollar; does not fail to treat 'all alike under like circumstances and conditions, both in the privilege conferred and the liabilities imposed.' The jurisdiction of courts is fixed by amounts. The right of appeal is. As was said at bar the Congress of the United States has classified the right of suitors to come into the United States courts by amounts. Regarding these alone, there is the same inequality that is urged against classification of the Illinois law. All license laws and all specific taxes have in them elements of inequality, nevertheless they are universally imposed and their legality has never been questioned.'

The Court has likewise sustained a statute which imposed an ad valorem tax upon telephone companies with

BLEED THROUGH—POOR COPY

annual earnings of $500 or more, while exempting others similarly situated whose earnings were less than $500, *Citizens Telephone Co.* v. *Fuller*, 229 U. S. 322, 329; a statute which imposed a license fee upon 'all persons' engaged in the laundry business but exempted concerns employing not more than two women, and steam laundries, *Quong Wing* v. *Kirkendall*, 223 U. S. 59, 62; an ordinance under which a $5 tax was laid upon merchants whose gross sales were $1,000, and a tax of $10 upon those similarly situated whose sales were $1,001, *Clark* v. *Titusville*, 184 U. S. 329, 331; an ordinance which laid a tax of $1,000 upon theatres whose admission was $1 or more, but only $400 upon those similarly situated whose admission prices were less than $1 and more than 50 cents, *Metropolis Treatre Co.* v. *Chicago*, 228 U. S. 61, 69-70.

In the light of these decisions, I should have supposed the validity of the classification made by the Legislature of Kentucky to be clear. Recognizing that members of the legislature of the State which made the classification, and members of the court which sanctioned it, necessarily possessed greater knowledge of local conditions and needs than is possible for us, I should have assumed that this classification, which obviously is not invidious, was a reasonable one, unless some facts were adduced to show that it was arbitrary. Compare *Heisler* v. *Thomas Colliery Co.*, 260 U. S. 245, 255; *Clarke* v. *Deckebach*, 274 U. S. 392, 397. No such facts have been adduced by the Company. On the other hand, facts called to our attention by counsel for the Commonwealth and of which we may take judicial notice, *McLean* v. *Denver & Rio Grande R. R. Co.*, 203 U. S. 38, 50; *Sligh* v. *Kirkwood*, 237 U. S. 52, 61, show that the classification was adopted by the Legislature of Kentucky in an effort to equalize the tax burden incident to loans."

And again Mr. Justice Brandeis in the last cited case, 277 U. S. at 53, said:

"Wherever the line might be drawn, the statute would sometimes operate unjustly. But such occasional in-

> stances of injustice would not render the classification arbitrary. As was said in *Metropolis Treatre Co.* v. *Chicago*, 228 U. S. 61, 69, 70: 'The problems of government are practical ones and may justify, if they do not require, rough accommodations—illogical, it may be, and unscientific.' "

In *Madden* v. *Kentucky*, 309 U. S. 83, this Court spoke definitely upon the question of classification, and at p. 88 cited the dissenting opinion of Mr. Justice Brandeis in *Louisville Gas & Electric Co.* v. *Coleman, supra.*

Extensive quotation from *Madden* v. *Kentucky, supra*, is made at p. 17, 18 of this Brief and same will not be repeated here. Appellees respectfully ask the Court to refer to the previous quotation.

Carmichael v. *Southern Coal & Coke Co.*, 301 U. S. 495, construes the unemployment compensation Act of Alabama in which it was charged that the classification of employers who had eight or more employees for the operation of the statute was arbitrary and in violation of Section 1, Fourteenth Amendment to the Constitution of the United States.

Speaking to this question, this Court, in reversing the Trial Court (301 U. S. at 510, 511), said:

> "Distinctions in degree, stated in terms of differences in number, have often been the target of attack, see *Booth* v. *Indiana*, 237 U. S. 391, 397. It is argued here, and it was ruled by the court below, that there can be no reason for a distinction, for purposes of taxation, between those who have only seven employees and those who have eight. Yet, this is the type of distinction which the law is often called upon to make. It is only a difference in numbers which marks the moment when day ends and night begins, when the disabilities of infancy terminate and the status of legal competency is assumed. It separates large incomes which are taxed from the smaller ones which are exempt, as it marks here the difference between the proprietors of larger businesses who are taxed and the proprietors of smaller businesses who are not.

BLEED THROUGH—POOR COPY

"Administrative convenience and expense in the collection or measurement of the tax are alone a sufficient justification for the difference between the treatment of small incomes or small taxpayers and that meted out to others."

It is to be noted that the language of this Court in the above quotation is distinctly similar with respect to when "a point has to be fixed or a line has to be drawn" to the language of Mr. Justice Holmes in his dissenting opinion in Louisville Gas & Electric Co. v. Coleman, supra.

It may have been determined by the legislature of Iowa that the administrative convenience and expense in applying the legislative enactment challenged in the case at bar to many small tracts of land would be greater than the benefits. This would have been sufficient distinction if there were none other. Or it may have been, as was said by the Supreme Court of Iowa in Leicht v. Burlington, supra, fixed at 10 acres as a guide to the assessor or other taxing officials. At any rate, it is as logically placed at 10 acres as at 8 acres, or any other figure. The classification at 10 acres for tax exemption purposes of lands used for agricultural purposes has existed in the law of Iowa for more than 70 years, and was held constitutional by the Supreme Court of Iowa as a reasonable classification more than 60 years ago. See Leicht v. City of Burlington, supra, decided in 1887. Surely, under the rules of construction of the 14th Amendment to the Federal Constitution hereinbefore quoted, this Court cannot say that the classification is in the remotest chance arbitrary, capricious, hostile, or palpably erroneous, and that a substantial Federal question is raised by reason of the 10 acre line of demarcation; especially in view of the long established holdings of this Court. This Court should, therefore, decline jurisdiction in this case.

V

Proposition

The classification of school districts wherein the millage levy is 15 mills for general (operational) school purposes in order that the tax credit may apply is not plainly arbitrary, hostile, capricious, or palpably erroneous; and is therefore not violative of Section 1, of the 14th Amendment to the Constitution of the United States.

AUTHORITIES

See cases and quotations in Division IV of this Brief:

Miller v. *Childers*, 107 Okla. 57, 238 Pac. 204 at 206, 207.
Great Northern R'y Co. v. *Whitfield*, 65 S. D. 173, 272 N. W. 787 at 790, 791.
Apartment Owners Ass'n v. *City of Minneapolis*, 191 Minn. 365, 254 N. W. 443.
Myers v. *Board of Education*, 48 Oh. App. 43, 192 N. E. 393.

Application of Cited Cases

The cases cited and quoted in Division IV, P. 35, relating to the classification at 10 acres for the operation of the legislative enactment apply with equal force to the 15 mill classification. The Legislature of Iowa determined that where millage levies are below 15 mills for general operating expenses, the school taxes were not a burden on agricultural lands. This Court has said that where a line must be drawn the Courts will leave it to the legislative body as to where it may be drawn.

The 15 mill limitation for the purpose of tax limitation or ceiling, or for the purpose of appropriations to aid education are not unusual. The Constitution of Oklahoma provides that school districts are authorized to levy up to

BLEED THROUGH—POOR COPY

15 mills for general school purposes. The legislature made an appropriation to aid school districts where such millage did not raise sufficient funds to carry on a school. The Supreme Court of Oklahoma sustained the legislative enactment against an attack that the Act was arbitrary and an unreasonable classification.

The Supreme Court of Oklahoma, 238 Pac. at 206, said:

> "The Constitution has specifically authorized each school district to levy and collect a 15-mill tax levy, to be by it expended in carrying on this work. There the Constitution terminates the expenditure by a school district, and from there, where the school district's work must end, the Legislature must 'carry on' to the point where we can say that there is satisfied the constitutional mandate for the maintenance of a free public school system. The Legislature, with authority so to do, has said an 8 months annual school term is necessary. Affirming its decree, we adopt its judgment as our own. With the maximum levy expended, many school districts will have perhaps only a 3 months term, while others may have a 12 month school if they so desire. Without affirmative aid by the Legislature, the constitutional mandate for an efficient free school system will be unexecuted in those weak school districts."

And further, 238 Pac. at 207, that Court said:

> "The act makes the appropriation available in all school districts in the state where, under the restriction of the Constitution, such districts are unable to maintain the public schools for such length of terms as the Legislature, acting within its constitutional authority, and the exercise of sound legislative discretion, has declared must be provided. *The classification is a reasonable one. The act applies to all then or thereafter coming within the classification, and is not violative of the section of the Constitution to which we have referred.*" (Italics supplied)

In *Great Northern Ry. Co.* v. *Whitfield*, 65 S. D. 173, 272 N. W. 787 at 790, 791, the Supreme Court of South Dakota sustained a law of that state which fixed the maximum levy on agricultural lands at 8 mills against an attack that the law constituted an arbitrary classification in violation of Section 1, 14th Amendment to the Constitution of the United States.

Appellees here point out that the statute attacked in the case at bar applies to any and all school districts in the state, either now or in the future, where the millage rate for general tax purposes exceeds 15 mills. Naturally, the millage rates in school districts vary from time to time and the statute applies in any and all school districts wherein the levy exceeds 15 mills in any year.

Assessment statutes may be fitted to the state's tax system either by maximum tax levies in mills on a class of property, or by a percentage of the assessed valuation.

In the laws of Minnesota, property has long been classified on the basis of a percentage of actual value. This scheme of taxation was sustained against an attack that it violated the equal protection clause of the Fourteenth Amendment to the Federal Constitution. In *Apartment Operators' Ass'n* v. *City of Minneapolis*, 254 N. W. at 444, the Supreme Court of Minnesota, citing many opinions of this Court, sustained the law and at the cited page said:

> "In classifying property for the purpose of taxation, the Legislature is determining a matter of state policy and is not tied down to any narrow or technical rule." Dohs v. Holm, 152 Minn. 529, 189 N. W. 418, 420.
>
> Prior to the 1933 enactment here considered, real property was divided into three general classes, viz.: 'Real estate in which iron ore is known to exist' (the iron ore, mined or unmined, assessed at 50 per cent of its true value); 'unplatted real estate' at 33⅓ per cent of its true value, and all other real estate at 40

BLEED THROUGH—POOR COPY

per cent of its true value. Mason's Minn. St. 1927, p. 1933. Chapter 359 provides:

'Class 3 b. All unplatted real estate, • • • which is used for the purposes of a homestead, shall constitute class three 'b' (3b) and shall be valued and assessed at twenty (20) per cent of the true and full value thereof. Provided, if the true and full value is in excess of the sum of $4,000.00, the amount in excess of said sum shall be valued and assessed as provided for by class three (3) hereof. (Property coming within class 3 is valued and assessed at 33⅓ per cent of its true value.)

'All platted real estate • • • which is used for the purposes of a homestead, shall constitute class 3c and shall be valued and assessed at twenty-five (25) per cent of the true and full value thereof. Provided, if the true and full value is in excess of the sum of $4,000.00, the amount in excess of said sum shall be valued and assessed as provided for by class four (4) hereof. (Property coming within class 4 is valued and assessed at 40 per cent of its true value.)'

"The classification of platted and unplatted land still remains. That classification is again divided into homestead and nonhomestead lands, the former being assessed at a lesser percentage of true value. The distinction is predicated upon the use made of the property. The other change is based upon value and gives a preference to homesteads of a value of $4,000 or less."

And again at p. 445 the Court said:

"*Placing homesteads in two classes on the basis of valuation was within the scope of the broad power of the Legislature to classify property for the purpose of taxation. Its selection of property for one classification or another is binding upon the courts, 'unless it appears beyond a reasonable doubt that the legislative body acted arbitrarily and without sufficient information.'* McReavy v. Holm, 166 Minn. 22, 206 N. W. 942, 944. The United States Supreme Court, in Citi-

zens' Tel. Co. v. Fuller, 229 U. S. 322, 33 S. Ct. 833, 836, 57 L. Ed. 1206, stated: 'Granting the power of classification, we must grant government the right to select the differences upon which the classification shall be based, and they need not be great or conspicuous. * * * The state is not bound by any rigid equality. This is the rule; its limitation is that it must not be exercised in 'clear and hostile discriminations between particular persons and classes.' We conclude that the classification here considered does not come within the above quoted limitations." (Italics supplied.)

A classification of school districts at 15 mills was sustained against an attack that it was not uniform in operation in *Myers* v. *Bd. of Education*, 48 Ohio App. 43, 192 N. E. 393. The statute provided that school districts wherein the millage levy for school purposes was 15 mills could participate in the state educational equalization fund by voting on additional school fund tax levy of not to exceed 3 mills. The first qualification for participation in the state fund was that the levy for school purposes must exceed 15 mills in some districts and 9.5 mills in other districts. The Court held that the Act was of uniform operation, and in 192 N. E. at 400, said:

"Under the provisions of section 5625-18a, the period the levy remains in effect is the number of years the school district may continue to participate in the equalization fund, which is a matter of public record and determinable from such record, and the rate of tax is fixed by definite arithmetical processes, determinable from public records, so that the rate of the tax and the period for which it is to run are both definite and certain. *The act is of uniform operation throughout the state, as all school districts similarly situated were entitled to its benefits; and the tax therein provided to be levied was by uniform rule, as it was the same in every school district proceedings pursuant to the act*, and the object of the tax was distinctly stated." (Italics supplied.)

BLEED THROUGH—POOR COPY

Although the question of special privileges and immunities and equal protection of the laws clause of Section 1, Fourteenth Amendment to the Federal Constitution was not raised and decided, the question of uniformity of operation was raised and decided, and, if uniform in operation the Act could not be arbitrary, or hostile within the meaning of that amendment.

These cases from state courts are not binding upon this Court and are cited merely to show that a 15 mill limitation, or other millage limitation, are common in school tax law legislation and that the line of demarcation at 15 mills is within legislative discretion with which the Courts will not interfere or hold in violation of Section 1, of the Fourteenth Amendment to the Federal Constitution.

This Court cannot say that a substantial Federal question under the Fourteenth Amendment has been raised by this 15 mill classification, and this Court should decline jurisdiction on this ground.

VI

Proposition

The legislative enactment challenged in the case at bar was enacted for a public purpose, to-wit in aid of agriculture as an industry, and to encourage the reorganization of public school districts; the legislature of the State of Iowa, and the Supreme Court of Iowa have so determined; and this Court will not hold the enactment void unless "the act be so arbitrary as to compel the conclusion that it does not involve an exertion of the taxing power, but constitutes, in substance and effect, the direct exertion of a different and forbidden power, as, for example, the confiscation of property".

AUTHORITIES

Dickinson v. *Porter,* (The case at bar), 35 N.W. 2d (Iowa) 66 at 76, 78, 79, 81, Appellant's Statement as to Jurisdiction, Appendix "C", p. 15 to p. 28;

Fallbrook Irrigation Dist. v. *Bradley,* 164 U. S. 112 at 157 to 161; 41 L. Ed. 388, 389; 17 S. Ct. 56 at 62 to 64;

Thomas v. *Gay,* 169 U. S. 264 at 278, 279, 42 L. Ed. 740 at 746, 18 S. Ct. 345;

Strickley v. *Highland Boy Mining Co.,* 200 U. S. 527 at 530, 531, 50 L. Ed. 581 at 583, 26 S. Ct. 301 at 302, 303;

Hairston v. *Danville & Western Ry.,* 208 U. S. 598 at 606, 607, 52 L. Ed. 637 at 641, 642, 28 S. Ct. 331 at 334, 335;

Union Lime Co. v. *C. & N.W. Ry. Co.,* 233 U. S. 211 at 218, 58 L. Ed. 924 at 928, 34 S. Ct. 522 at 524;

Jones v. *City of Portland,* 245 U. S. 217 at 221, 222, 62 L. Ed. 252 at 255;

Green v. *Frazier,* 253 U. S. 233 at 239, 240, 64 L. Ed. 878 at 881, 882, 40 S. Ct. 499 at 501;

Rindge v. *County of Los Angeles,* 262 U. S. 700 at 705, 706, 67 L. Ed. 1186 at 1192, 1193;

Milheim v. *Moffat Tunnel Dist.,* 262 U. S. 710 at 717, 67 L. Ed. 1194 at 1199, 43 S. Ct. 694 at 696;

Louisville Gas & Electric Co. v. *Coleman,* 277 U. S. 32 at 40, 72 L. Ed. 770 at 775, 48 S. Ct. 423 at 426;

Williams v. *Mayor of Baltimore,* 289 U. S. 36 at 41, 42, 77 L. Ed. 1015 at 1021, 1022, 53 S. Ct. 431 at 433;

A. Magnano Co. v. *Hamilton,* 292 U. S. 40 at 43, 44, 78 L. Ed. 1109 at 1113, 1114, 54 S. Ct. 599;

Carmichael v. *Southern Coal & Coke Co.,* 301 U. S. 495 at 514, 515, 81 L. Ed. 1245 at 1256, 57 S. Ct. 868 at 874, 875;

BLEED THROUGH—POOR COPY

Sage Stores Co. v. *Kansas*, 323 U. S. 32 at 35, 89 L. Ed. 25 at 28 65 S. Ct. 9 at 10;
Asbury Hospital v. *Cass County*, 326 U. S. 207 at 214, 215, 90 L. Ed. 6 at 13, 14, 66 S. Ct. 61 at 65;
Everson v. *Board of Education*, 330 U. S. 1 at 6, 7, 91 L. Ed. 711 at 718, 719, 67 S. Ct. 504 at 506, 507;
Board of Supervisors v. *Stewart*, 30 Iowa 9 at 22, 29, 1 Am. Rep. 238;
Grout v. *Kendall*, 195 Iowa 467 at 477, 478, 192 N.W. 529 at 533;
Carroll v. *City of Cedar Falls*, 221 Iowa 277 at 282, 292, 261 N.W. 652 at 655, 660;
Ahrweiler v. *Board*, 226 Iowa 229 at 233, 236, 283 N.W. 889 at 891, 892;
Apartment Operators' Assn. v. *City of Minneapolis*, 195 Minn. 365, 254 N.W. at 443, 444, 445;
State v. *Snyder*, 29 Wyo. 199, 212 Pac. 771, 777, 782.

Application of Cases Cited

The Supreme Court of Iowa, in the opinion in the case at bar, 35 N.W. 2d 66 at 76, held that the legislative enactment for the purpose of benefiting agriculture, Iowa's basic industry, and to encourage the reorganization of school districts to improve the state's educational system, both of which are universally held to be for the general welfare and therefore each is for a "public" purpose. These holdings are assigned as error in paragraphs 5, 6, 7, and 8, p. 2, 3, Appellant's Assignment of Errors.

The Supreme Court of Iowa in the case at bar, 35 N.W. 2d at 76; Appellant's Statement as to Jurisdiction, p. 15, 17, said

> "As stated in Watson *v.* State Comptroller, 254 U. S. 122, 124, 125, 41 S. Ct. 43, 44, 65 L. Ed. 170, 175: 'Any classification is permissible which has a reasonable relation to some permitted end of government action.

• • • It is enough, for instance, if the classification is reasonably founded in 'the purposes and policy of taxation'. (Citations.)'

The power of state legislature to adjust their tax laws in order to encourage an industry or undertaking deemed vital to the welfare of the state or in furtherance of some related principle of public policy has frequently been upheld.

The governor of the state in commenting upon the report of the school code commission said in his message to the legislature that enacted this law, 'We all know that agriculture is Iowa's basic resource. Upon its prosperity depends the prosperity of our great number of small businesses and communities.' *It was most effectively demonstrated during the depression of the early nineteen thirties that the well-being of the state as a whole is directly dependent upon the welfare of agriculture. The prosperity of our basic industry was no less vital when this act was passed nor is it less vital now when many other countries look to us for food and agriculture must supply their needs.*

Our state constitution contains the express mandate, 'The General Assembly shall encourage, by all suitable means, the promotion of intellectual, scientific, moral, and agricultural improvement.' Art. IX. 2d div., sec. 3.

We have frequently referred to agriculture as the basic industry in this state. See for example Blume *v.* Crawford County, 217 Iowa 545, 550, 551, 250 N.W. 733, 92 A.L.R. 757; Clear Lake Co-op. Live Stock Shippers' Ass'n. *v.* Weir, supra, 200 Iowa 1293, 1298, 206 N.W. 297. The Blume case (217 Iowa 545, 250 N.W. 735) upholds a law directing county boards of supervisors to appropriate funds raised by taxation to county farm bureaus under certain conditions and says a statute in aid of agriculture 'is not repugnant to any constitutional provision.' The plain inference from the opinion is that what benefits agriculture benefits the state as a whole. Other decisions generally like the Blume case appear in Annotation, 92 A.L.R. 768, 770.

BLEED THROUGH—POOR COPY

Pertinent here is this language from Carman *v.* Hickman County, 185 Ky. 630, 215 S.W. 408, 411:

"• • • *it is a matter of common knowledge, of which everybody must take notice, that in the agricultural interests of the state lie its chief source of wealth, and that the prosperity of the state springing from this source contributes to the growth and importance of every other industry in the state, as well as to the comfort and happiness of the whole people;* • • •".

It is not debatable that it is part of the public policy of this state, evidenced by our constitution and numerous statutes, to encourage agriculture. It seems equally plain the encouragement of our basic industry serves the public interest. *We are not convinced the legislature might not fairly conclude this law in its practical operation will both benefit and encourage agriculture.*" (Italics supplied.)

To sustain this holding the Court cited (See 35 N.W. 2d at 77) from the opinions of this Court the following cases:

Carmichael v. *Southern Coal & Coke Co.*, 301 U. S. 495, 57 S. Ct. 868, 872, 81 L. Ed. 1245, 1253, 1255, 109 A. L. R. 1327, 1333, 1335;

Aero-Mayflower Transit Co. v. *Georgia Pub. Serv. Comm.* 295 U. S. 285, 291, 55 S. Ct. 709, 711, 79 L. Ed. 1439, 1444;

American Sugar Refining Co. v. *Louisiana*, 179 U. S. 89, 95, 21 S. Ct. 43, 46, 45 L. Ed. 102, 105;

A. Magnano Co. v. *Hamilton*, 292 U. S. 40, 54 S. Ct. 599, 78 L. Ed. 1109;

Louisville Gas & Electric Co. v. *Coleman*, 277 U. S. 32, 48 S. Ct. 423, 72 L. Ed. 770.

The Court also cited cases from many state jurisdictions. With reference to the furtherance of the reorganization

of school districts to improve the state's educational system, the Court, 35 N.W. 2d at 78, said:

> "Since we have upheld the classification of lands used for agricultural purposes upon the reasons stated in Division III and this Division IV, *it is unnecessary to consider whether, as suggested by the legislative commission that recommended the passage of the act and as argued by defendants, the classification might also be sustained as in furtherance of the reorganization of school districts in order to improve our educational system. We may observe, however, this might well have been one of the considerations that occurred to the legislature in making the classification and we cannot say such conclusion could not be reached in good faith.* The test of reasonableness of a classification is good faith of the legislature in making it." (Italics supplied)

The operation of the Act is simple. Sections 426.6, *et seq.*, Code of Iowa, 1946, p. 2 of Appellant's quotation of the statutes attacked, provide that the county auditor (who makes up the tax lists in Iowa) lists by school districts all the tracts of lands entitled to credit under the Act together with the taxable value, as shown by the assessment rolls returned to him by the assessors of the county. He then determines from this value and the budget of the school district filed with him the millage rate in each school district for general school purposes. If the millage rate is in excess of 15 mills he computes the amount of credit each and all the tracts are entitled to, by multiplying the taxable value thereof by the millage rate in excess of 15 mills. He totals the amounts for all school districts in his county and forwards the total for his county to the state comptroller. The state comptroller then totals the amount of credits for all counties of the state and apportions the funds appropriated and in his hands to the several counties in the state, and forwards state warrants to the county auditors of the several counties of the state. Upon receiving the warrants,

BLEED THROUGH—POOR COPY

the county auditor determines the amount of credit to be credited to each tract of agricultural lands and enters that amount on the tax list. He then delivers the tax lists (showing the credit to each tract of agricultural land) and the state comptroller's warrant representing the total credits to the agricultural land in his county to the county treasurer who credits each school district with the total amount of the tax credits credited on lands in the district, and enters the amount credited to each tract of land in the county upon the tax receipt for the land.

The Court, 35 N.W. 2nd at 81 pointed out that this procedure is modeled after the Homestead Tax Credit Act, Chapter 425, Code of Iowa, 1946 enacted in 1937. The Court said:

> "The law in question seems directly analogous to the Homestead Tax Credit Act, Ch. 425, Code, 1946. *It is plainly patterned after the homestead law. The public policy served by the former is the encouragement of the industry on which the prosperity of the state largely depends. The public policy served by the other,* as stated in Ahrweiler *v.* Board, 226 Iowa, 229, 233, 236, 283, N.W. 889, *is the encouragement of home ownership. Perhaps the ownership of homes is more beneficial to the state than the welfare of agriculture. If so, the distinction is largely of degree and not of kind.*" (Italics supplied)

In the case of Ahrweiler *v.* Board, 226 Iowa 229, 233, 236; 283 N.W. 889, 891, 892, the Supreme Court of Iowa said:

> "Thus it appears that the legislature, realizing the social and material benefits to the public at large from the ownership of homesteads by the people, sought to encourage and increase such ownership and occupation. The method adopted was to grant to each homestead a credit against the real estate taxes for each year the property constituted a homestead."

The Court in the cited case, 283 N.W. at 892 said:

> "*The tax credit is not a credit to the owner, but to the homestead, although this results in benefit to the owner and cash refunds were allowed taxpayers who had paid such taxes prior to the allowance of the credit.* That the credit is to the property, as distinguished from the owner, is evident from various provisions of the act. *The credit (or refund) is given against the tax on the homestead and the taxpayer makes claim therefor as owner of the homestead.*
>
> "The Homestead Exemption Law was not adopted upon the premise that a homestead credit was a gift or bonus with no consideration requirements in return. *The principle behind the act was benefit to be returned to the state and its people by homestead ownership.* As consideration for exemption it might be said that the homestead earns its credit each year of its existence. Consequently, it should not be entitled to credit for any other year. The credit against the 1936 tax may be explained and justified upon the theory that it was morally due for service already rendered." (Italics supplied)

The Court in the case at bar, 35 N.W. 2d 81, also said:

> "Again, from 1 Cooley, 4th Ed., section 175, page 384: 'In case of doubt, courts are largely influenced by the public policy of the state, in determining whether taxation is for a public purpose.' See also 61 C.J., Taxation, section 20.
>
> *As previously indicated, there can be no question it is part of the public policy of this state to encourage agriculture. And the furtherance of the reorganization of school districts in order to improve our educational system would be as plainly part of our public policy. As hereinafter pointed out, it has been the policy of the legislature from its inception to grant numerous tax exemptions.*" (Italics supplied)

BLEED THROUGH—POOR COPY

The Supreme Court of Iowa, in the state's early history (1870) sustained a tax levied to aid in the construction of railroads as a tax for a public purpose. See 30 Iowa 9, I Am. Rep. 238. That Court also sustained an appropriation through a bond issue for the payment of a bonus to soldiers, sailors and marines for service in World War I as being for a public purpose. In *Grout* v. *Kendall*, 195 Iowa 467, 477, 478; 192 N.W. 529 at 533, that Court said:

> "Whether a particular purpose is a public purpose, and whether it has the sanction of a moral obligation of the state, are questions which have never been definitely answered or defined. It has been quite uniformly held by the courts that the determination of such questions inheres largely in the legislative power. *Within the zone of doubt that is a moral obligation of the state, and that is a public purpose, which the Legislature deems to be such.*"

The Supreme Court of Iowa, in the case at bar, construed the legislative enactment to place a ceiling of 15 mills upon agricultural lands in tracts of 10 acres or more, and by appropriation from funds in the state treasury reimburses the districts wherein the ceiling applies. In the opinion, 35 N.W. 2d at 79, Appellant's Statement as to Jurisdiction, Appendix "C," p. 22, the Iowa Court said:

> "In reality, however, the law separately classifies only lands used for agricultural purposes and those not so used and then subclassifies agricultural lands into tracts containing ten acres or more and those not that large (section 424.2) for the purpose of applying a different tax burden to the lands thus classified in order to apportion the taxes to the actual benefits received, to encourage agriculture and, the legislature may also have felt, to further the reorganization school districts so as to improve our educational system.
>
> A ceiling of 15 mills for school taxes is placed upon agricultural tracts of ten acres or more and the state,

to the amount of $500,000, reimburses the districts in which the ceiling is applied. The South Dakota law, upheld in Great Northern R. Co. *v.* Whitfield, *supra*, 65 S.D. 173, 272 N.W. 787, 111 A.L.R. 1475, fixes eight mills as the ceiling for school taxes on agricultural lands."

The 52nd session of the Iowa General Assembly created a Military Service Tax Credit Fund, (Ch. 231, Laws of 52nd G.A.). For more than fifty years, the State of Iowa has granted exemption in a limited amount to persons for military service in the various wars engaged in by the United States and that exemption has now been extended to persons for military service in so-called World War II. The legislative enactment last above referred to made an appropriation to reimburse local taxing bodies for the revenue lost on an analogous basis to the agricultural land credit act challenged in the case at bar.

The Court in the case at bar, 35 N.W. 2d at 79, 80, Appellant's Appendix, p. 23, 24, with reference to the appropriation feature of the challenged enactment, said:

"Since, as we have held, this act is a valid taxing measure is not rendered invalid by the appropriation provision. The public policy in furtherance of which the classification is made for the purpose of applying a different tax burden or a partial tax exemption, if the law be considered a partial tax exemption measure, is sufficient to support the appropriation. An act cannot be said to be for a private purpose where 'some principle of public policy' underlies its passage. Whether an appropriation connected with a taxing statute is for a public purpose depends upon whether the remainder of the statute is for such purpose. See 1 Cooley, 4th Ed., section 177.

Without the appropriation made by the act the loss of revenue to the school districts by the imposition of the ceiling of 15 mills would fall upon other property

BLEED THROUGH—POOR COPY

owners in the districts. Under the law as written, however, such loss is borne by the state up to the amount appropriated. The money is taken from one public fund and put into another.

That the appropriation feature of the act does not render it invalid in the respect claimed see State *ex rel.* Board *v.* Snyder, 29 Wyo. 199, 212 P. 771, 777, 782, which sustains a law that exempts from taxation property to the amount of $2000 of certain war veterans and provides for reimbursement by a state appropriation to each county in the amount of county tax on the exempted property. The court holds it a valid tax exemption statute because the legislature might have found it served a public purpose as an incitement to patriotism and encouragement to defend the country in future conflicts and the validity of the law is not affected by the appropriation measure. This from the opinion is pertinent here:

'A lawful exemption from taxation cannot, we think, be regarded as a gift or donation to or in aid of the individual • • • in whose favor the exemption is declared. • • • Indeed, we do not think the statute makes a gift to the exemption claimant even indirectly. The state may be regarded as the sole actor. It exempts the property declared to be exempt, and stands the loss not only of the state tax which would otherwise be collected, but the county tax as well. The money appropriated is public money, whether in the state or county treasury, and by the statute is taken out of one public pocket or fund and put into another.' " (Italics supplied)

For more than 50 years, this Court has held that where the legislatures and the courts of a state has construed a legislative enactment to be a part of the public policy of the state and to be enacted for a public purpose, this Court will treat such determination "with very great respect and • • • regard the decisions as embodying the delib-

erate judgment and matured thought of the courts of that state on this question." See *Fallbrook Irrigation District* v. *Bradley*, 164 U. S. at 160, 161 where this Court said that the rule applies to "the exercise of the right of eminent domain or by that of taxation."

In *Strickley* v. *Highland Boy Mining Co.*, 200 U. S. at 530, this Court, speaking to the same subject of "public purpose," said:

> "In view of the decision of the state court we assume that the condemnation was authorized by the state laws, subject only to the question whether those laws as construed are consistent with the Fourteenth Amendment. Some objections to this view were mentioned, but they are not open. If the statutes are constitutional as construed, we follow the construction of the state court."

In *Hairston* v. *Danville & Western Ry. Co.*, 208 U. S. 598 at 606, 607, speaking to the same subject, said:

> "The rule of state decision is clearly established and we have no occasion here to consider the varying reasons which have influenced its adoption. But when we come to inquire what are public uses for which the right of compulsory taking may be employed, and what are private uses for which the right is forbidden we find no agreement, either in reasoning or conclusion. The one and only principle in which all courts seem to agree is that the nature of the uses, whether public or private, is ultimately a judicial question. The determination of this question by the courts has been influenced in the different States by considerations touching the resources, the capacity of the soil, the relative importance of industries to the general public welfare, and the long-established methods and habits of the people. In all these respects conditions vary so much in the States and Territories of the Union that different results might well be expected. * * * The propriety of keeping in view by this court, while enforcing the Fourteenth Amendment, the diversity of local con-

BLEED THROUGH—POOR COPY

ditions and of regarding with great respect the judgments of the state courts upon what should be deemed public uses in that State, is expressed, justified, and acted upon in Fallbrook Irrigation District *v.* Bradley, ub. sup., Clark *v. Wells,* ub. sup. and Strickley *v.* Highland Boy Mining Co., ub. sup. What was said in these cases need not be repeated here. *No case is recalled where this court has condemned as a violation of the Fourteenth Amendment a taking upheld by the state court as a taking for public uses in conformity with its laws.*" (Italics supplied.)

In *Jones* v. *City of Portland,* 245 U. S. 217, this Court applied this rule to municipal taxation to establish and maintain a municipal wood, coal and fuel yard in the City of Portland, Maine. This Court, 245 U. S. at 221, said:

> "The act in question has the sanction of the legislative branch of the state government, the body primarily invested with authority to determine what laws are required in the public interest. That the purpose is a public one has been determined upon full consideration by the Supreme Judicial Court of the State upon the authority of a previous decision of that Court. Laughlin *v.* City of Portland, 111 Maine, 486.
>
> The attitude of this court towards state legislation purporting to be passed in the public interest, and so declared to be by the decision of the court of last resort of the State passing the act, has often been declared. While the ultimate authority to determine the validity of legislation under the Fourteenth Amendment is rested in this court, local conditions are of such varying character that what is or is not a public use in a particular State is manifestly a matter respecting which local authority, legislative and judicial, has peculiar facilities for securing accurate information. In that view the judgment of the highest court of the State upon what should be deemed a public use in a particular State is entitled to the highest respect."

With reference to the application of the rule on public purpose to the taxing power, this Court, in *Green* v. *Frazier*, 253 U. S. at 239, 240, said:

> "The taxing power of the States is primarily vested in their legislatures, deriving their authority from the people. When a state legislature acts within the scope of its authority it is responsible to the people, and their right to change the agents to whom they have entrusted the power is ordinarily deemed a sufficient check upon its abuse. When the constituted authority of the State undertakes to exert the taxing power, and the question of the validity of its action is brought before this court, every presumption in its favor is indulged, and only clear and demonstrated usurpation of power will authorize judicial interference with legislative action.
>
> In the present instance under the authority of the constitution and laws prevailing in North Dakota the people, the legislature, and the highest court of the State have declared the purpose for which these several acts were passed to be of a public nature, and within the taxing authority of the State. With this united action of people, legislature and court, we are not at liberty to interfere unless it is clear beyond reasonable controversy that rights secured by the Federal Constitution have been violated. What is a public purpose has given rise to no little judicial consideration. Courts, as a rule, have attempted no judicial definition of a 'public', as distinguished from a 'private' purpose, but have left each case to be determined by its own peculiar circumstances. Gray, Limitations of Taxing Power, sec. 176, 'Necessity alone is not the test by which the limits of State authority in this direction are to be defined, but a wise statesmanship must look beyond the expenditures which are absolutely needful to the continued existence of organized government, and embrace others which may tend to make that government subserve the general well-being of society, and advance the present and prospective happiness and prosperity of the people.' Cooley, Justice, in People *v.* Salem, 20 Michigan, 452. Questions of policy are not submitted to judicial determination, and the courts have no general authority of supervision over the exer-

BLEED THROUGH—POOR COPY

cise of discretion which under our system is reposed in the people or other departments of government."

Williams v. *Mayor etc. of Baltimore*, 289 U. S. 36, construed a statute of the State of Maryland exempting a single railroad which was insolvent. The Circuit Court of Appeals held the statute in violation of the Fourteenth Amendment to the Federal Constitution on the grounds that it granted special privilege to a single railroad. This Court reversed the Circuit Court of Appeals and in the opinion, 289 U. S. at 42, said:

> "It is not the function of a court to determine whether the public policy that finds expression in legislation of this order is well or ill conceived. *Otis v. Parker*, 187 U. S. 606, 609; *Missouri Kansas & Texas Ry. Co. v. May*, 194 U. S. 267; *Sproles v. Binford*, 286 U. S. 374, 388, 389. The judicial function is exhausted with the discovery that the relation between means and end is not wholly vain and fanciful, an illusory pretense. Within the field where men of reason may reasonably differ, the legislature must have its way. *Otis v. Parker, supra.* Nor in marking out that field will a court be forgetful of presumptions that help to fix the boundaries. 'As underlying questions of fact may condition the constitutionality of legislation of this character, the presumption of constitutionality must prevail in the absence of some factual foundation of record for overthrowing the statute.'" (Italics supplied.)

In *Carmichael* v. *Southern Coal & Coke Co.*, 301 U. S. 495, this Court construed the Alabama Unemployment Compensation Act as levying a tax for a public purpose. In the opinion, 301 U. S. at 514, 515, the Court said:

> "The states, by their constitutions and laws, may set their own limits upon their spending power, see *Loan Association* v. *Topeka*, 20 Wall. 655; cf. *Parkersburg v. Brown*, 106 U. S. 487; *Cole v. La Grange*, 113 U. S. 1, but the requirements of due process leave free scope for the exercise of a wide legislative discretion in determining what expenditures will serve the public interest.

> This Court has long and consistently recognized that the public purposes of a state, for which it may raise funds by taxation, embrace expenditures for its general welfare. *Fallbrook Irrigation Dist. v. Bradley, supra,* 161; *Green v. Frazier, supra,* 240, 241. The existence of local conditions, which, because of their nature and extent, are of concern to the public as a whole, the modes of advancing the public interest by correcting them or avoiding their consequences, are peculiarly within the knowledge of the legislature, and to it, and not to the courts, is committed the duty and responsibility of making choice of the possible methods. See *Fallbrook Irrigation Dist. v. Bradley, supra,* 160; *Jones v. Portland, supra,* 221, 224, 225; *Green v. Frazier, supra,* 239, 240. As with expenditures for the general welfare of the United States, *United States v. Butler,* 297 U. S. 1, 67; *Helvering v. Davis,* post, p. 619, whether the present expenditure services a public purpose is a practical question addressed to the law-making department, and it would require a plain case of departure from every public purpose which could reasonably be conceived to justify the intervention of a court." (Italics supplied.)

Certainly, it is clear at first glance that legislative enactments to aid and encourage agriculture, and to promote the reorganization of school districts are a part of the public policy of the State of Iowa. As pointed out by the Supreme Court of Iowa, 35 N. W. 2d at 76, the Constitution of Iowa contains the express mandate that "The General Assembly shall encourage, by all suitable means, the promotion of intellectual, scientific, moral, and agricultural improvement. Art. IX, 2d div., sec. 3." There is, in fact, a compact with the Government of the United States to do that very thing.

Can this Court say that a law enacted for the very purposes of that mandate from the people of Iowa and that compact with the Federal Government was not enacted for a public purpose as a part of the public policy of the State of Iowa in the face of the determination of the legislature and

BLEED THROUGH—POOR COPY

every Court of Iowa, including the Court of highest resort that the statute was enacted as a part of the public policy of the State of Iowa "to encourage agriculture" and "the furtherance of the reorganization of school districts in order to improve our educational system"? See 35 N. W. 2d at p. 81.

Certainly, at "first blush" it is apparent that the legislative enactment challenged in the case at bar is a valid exercise of legislative power, and no substantial Federal question is raised under Section 1, Fourteenth Amendment to the Federal Constitution.

In *Sage Stores Co.* v. *Kansas*, 323 U. S. 32, this Court sustained a statute of the State of Kansas prohibiting the sale of "filled milk". In the opinion, 323 U. S. at 34, 35, this Court said:

> "Apparently the objection under the equal protection clause is that the Kansas statute permits the sale of skimmed milk which has less calories and fewer vitamins than petitioners' compound and yet forbids the sale of the compound despite its higher nutritive value. Such an objection is governed by the same standards of legislation as objections under the due process clause. It is a matter of classification and the power of the legislature to classify is as broad as its power to prohibit. A violation of the Fourteenth Amendment in either case would depend upon whether there is any rational basis for the action of the legislature."

In *Asbury Hospital* v. *Cass County*, 326 U. S. 207 this Court sustained a law of North Dakota which excepted from compulsory sale lands acquired, lands owned by corporations whose business was dealing in farm lands and lands belonging to certain cooperative corporations. In sustaining the classifications, this Court, 326 U. S. at 214, 215, said:

> "The North Dakota Legislature may have thought that its policy with reference to corporate-owned agri-

cultural lands would be advanced by permitting corporations engaged in the business of dealing in farm lands to acquire and sell without restriction lands forced upon the market by the statute. It could have thought that its policy would be in part defeated by withholding authority from farm cooperatives to acquire and use farm lands for agricultural purposes. Cf. *United States v. Rock Royal Co-op.*, 307 U. S. 533, 562-564. *Statutory discrimination between classes which are in fact different must be presumed to be relevant to a permissible legislative purpose,* and will not be deemed to be a denial of equal protection if any state of facts could be conceived which would support it. *Rast* v. *Van Deman & Lewis Co.*, 240 U. S. 342, 357; *Carmichael* v. *Southern Coal Co.*, 301 U. S. 495, 509, and cases cited." (Italics supplied.)

In *Everson* v. *Board of Education*, 330 U. S. 1, this Court sustained a law of New Jersey which provided for paying costs of transporting pupils to school, including those who attend parochial or church schools, and to reimburse parents for transportation costs paid. This law was attacked on the grounds that it appropriated tax funds to private purposes in violation of the Fourteenth Amendment to the Federal Constitution.

In the opinion, 330 U. S. 1 at 6, 7, this Court said:

"The fact that a state law, passed to satisfy a public need, coincides with the personal desires of the individuals most directly affected is certainly an inadequate reason for us to say that a legislature has erroneously appraised the public need.

It is true that this Court has, in rare instances, struck down state statutes on the ground that the purpose for which tax-raised funds were to be expended was not a public one. *Loan Association v. Topeka*, 20 Wall. 655; *Parkersburg v. Brown*, 106 U. S. 487; *Thompson v. Consolidated Gas Utilities Corp.*, 300 U. S. 55. But the Court has also pointed out that this far-reaching authority must be exercised with the most extreme caution. *Green v. Frazier*, 253 U. S. 233, 240. Otherwise, a state's

BLEED THROUGH—POOR COPY

power to legislate for the public welfare might be seriously curtailed, a power which is a primary reason for the existence of states. Changing local conditions create new local problems which may lead a state's people and its local authorities to believe that laws authorizing new types of public services are necessary to promote the general well-being of the people. The Fourteenth Amendment did not strip the states of their power to meet problems previously left for individual solution. *Davidson v. New Orleans*, 96 U. S. 97, 103-104; *Barbier v. Connolly*, 113 U. S. 27, 31-32; *Fallbrook Irrigation District v. Bradley*, 164 U. S. 112, 157-158.

It is much too late to argue that legislation intended to facilitate the opportunity of children to get a secular education serves no public purpose. *Cochran v. Louisiana State Board of Education*, 281 U. S. 370; *Holmes, J., in Interstate Ry. v. Massachusetts*, 207 U. S. 79, 87. See opinion of *Cooley, J., in Stuart v. School District No. 1 of Kalamazoo*, 30 Mich. 69 (1874). The same thing is no less true of legislation to reimburse needy parents, or all parents, for payment of the fares of their children so that they can ride in public busses to and from schools rather than run the risk of traffic and other hazards incident to walking or 'hitchhiking.' See *Barbier v. Connolly, supra*, at 31. See also cases collected 63 A. L. R. 413; 118 A. L. R. 806. *Nor does it follow that a law has a private rather than a public purpose because it provides that tax-raised funds will be paid to reimburse individuals on account of money spent by them in a way which furthers a public program.* See *Carmichael v. Southern Coal & Coke Co.*, 301 U. S. 495, 518. *Subsidies and loans to individuals such as farmers and home-owners, and to privately owned transportation systems, as well as many other kinds of businesses, have been commonplace practices in our state and national history.*" (Italics supplied)

It is perfectly clear, at first blush, that the classifications in the legislative enactment attacked in the case at bar are in no way in violation of the Fourteenth Amendment; that the act was enacted in aid of agriculture (since it applies to all agricultural and horticultural land in the state except

tracts of less than 10 acres); that the classification at 10 acres is within legislative discretion; that the act was enacted for a "public purpose" as a part of the "public policy of the state" to encourage reorganization of school districts; that it has been so construed by the Court of highest jurisdiction in the State of Iowa as well as by the lower Court; that under the decisions of this Court these determinations are entitled to great respect by reason of local conditions, and the public policy of the State; that there is no substantial Federal question raised under Section 1, 14th Amendment to the Federal Constitution; and that this Court should decline jurisdiction in this case.

WHEREFORE, Appellees pray that an order be entered by this Court sustaining their Resistance to the Jurisdiction in this cause, and for their costs.

ROBERT L. LARSON,
Attorney General of Iowa,
Des Moines, Iowa;
DON HISE,
First Assistant Attorney General of Iowa,
Des Moines, Iowa;
EARL F. WISDOM,
Special Assistant Attorney General of Iowa;
1114 Register & Tribune Building,
Des Moines, Iowa;
BERT F. WISDOM,
1114 Register & Tribune Building,
Des Moines, Iowa;
F. H. BECKER,
County Attorney of Dubuque County,
Dubuque, Iowa,
Counsel for Appellees.

BLEED THROUGH—POOR COPY

APPELLEES' MOTION TO DISMISS OR AFFIRM

Come now all of the Appellees, by Robert L. Larson, Attorney General of Iowa, Don Hise, First Assistant Attorney General of Iowa, Earl F. Wisdom, Special Assistant Attorney General of Iowa, Bert F. Wisdom, and F. H. Becker, County Attorney of Dubuque County, Iowa, their counsel, and respectfully move this Court to dismiss the appeal taken herein by Laura Dickinson, or affirm the decision and judgment of the Supreme Court of Iowa rendered and filed herein and as grounds therefor states:

(1) That the appeal is taken for the purpose of delay only;

(2) That the cause shows upon its face that no substantial Federal question is presented for review under Section One, Fourteenth Amendment to the Federal Constitution;

(3) That, although the record in said cause may show that this Court has technical jurisdiction, it is manifest that the questions upon which the appeal is taken and the errors cited by said Appellant are so unsubstantial that further argument is unnecessary.

Authorities in Support of Motion

Rule 7, U. S. Supreme Court Rules;
Rule 12, Par. 3, U. S. Supreme Court Rules;
Missouri Pacific Ry. Co. v. *Castle,* 224 U. S. 541 at 544, 56 L. Ed. 875 at 878, 32 Sup. Ct. 606 at 608;
Chicago R. I. & P. Ry. Co. v. *Devine,* 239 U. S. 52 at 54, 60 L. Ed. 140 at 142, 36 Sup. Ct. 27 at 28;
Boston v. *Jackson,* 260 U. S. 309 at 314, 67 L. Ed. 274 at 282, 43 Sup. Ct. 129 at 131;

Hoages v. *Snyder*, 261 U. S. 600 at 601, 67 L. Ed. 819 at 821, 43 Sup. Ct. 435 at 436.

In *Missouri Pacific Ry. Co.* v. *Castle*, 224 U. S. 541, at 544, this Court said:

> "Defendant in error moves to affirm the judgment under subdivision 5 of Rule 6. The motion we think should prevail, since the questions urged upon our attention as a basis for a reversal of the judgment have been so plainly foreclosed by decisions of this court as to make further argument unnecessary."

This is the universal rule in this Court.

In further support of the Motion, see Authorities cited under Proposition II to Proposition VI, inclusive, of Appellees' "Brief in Suport of Resistance to Appellant's Statement of Jurisdiction."

The cases cited and quoted in Proposition II to Proposition VI, inclusive, of Appellees' "Resistance to Appellant's Statement of Jurisdiction" show conclusively that the classifications made by the legislative enactment challenged herein are reasonable and proper and within public policy of the State of Iowa throughout its history. Said citations from the opinions of this Court show conclusively that the errors upon which Appellant bases her claim for reversal have been so plainly foreclosed by the decisions of this Court as to make further argument unnecessary.

BLEED THROUGH—POOR COPY

WHEREFORE, Appellees pray that the appeal herein be dismissed; or in the alternative, that the decision and judgment of the Supreme Court of Iowa be affirmed.

ROBERT L. LARSON,
Attorney General of Iowa,
Des Moines, Iowa;

DON HISE,
First Assistant Attorney
General of Iowa,
Des Moines, Iowa;

EARL F. WISDOM,
Special Assistant Attorney
General of Iowa,
1114 Register & Tribune Building,
Des Moines, Iowa;

BERT F. WISDOM,
1114 Register & Tribune Building,
Des Moines, Iowa;

F. H. BECKER,
County Attorney of Dubuque County,
Dubuque, Iowa,
Counsel for Appellees.